

CONTENTS

Title	Page
54. Professions, Vocations, and Businesses	1
Index	955



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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO

ANNOTATED

ORIGINALLY PUBLISHED BY AUTHORITY OF
LAWS 1947, CHAPTER 224

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LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the
Idaho Code Commission

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EXECUTIVE SECRETARY

TITLE 54

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PUBLISHER'S NOTE

Since the publication in 2007 of the last edition of this volume, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, this new volume with Replacement Title 54 is issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter
Federal Supplement
Federal Reporter
United States Supreme Court Reports, Lawyers' Edition

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936
1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952

1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971
1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997

1998	March 23, 1998
1999	March 19, 1999
2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012

TABLE OF CONTENTS

TITLE 54

PROFESSIONS, VOCATIONS, AND BUSINESSES

Chapter	Sections
1. Abstracters of Title	§§ 54-101 — 54-105
2. Accountants	§§ 54-201 — 54-228
3. Architects	§§ 54-301 — 54-316
4. State Athletic Commission	§§ 54-401 — 54-422
5. Barbers	§§ 54-501 — 54-530
6. Podiatrists	§§ 54-601 — 54-616
7. Chiropractic Practice Act	§§ 54-701 — 54-715
8. Cosmeticians	§§ 54-801 — 54-837
9. Dentists	§§ 54-900 — 54-936
10. Electrical Contractors and Journeymen	§§ 54-1001 — 54-1020
11. Morticians, Funeral Directors and Embalmers	§§ 54-1101 — 54-1144
12. Engineers and Surveyors	§§ 54-1201 — 54-1236
13. Healers in General — Educational and License Requirements	[Repealed]
14. Nurses	§§ 54-1401 — 54-1419
15. Optometrists	§§ 54-1501 — 54-1525
16. Nursing Home Administrators	§§ 54-1601 — 54-1616
17. Pharmacists	§§ 54-1701 — 54-1771
18. Physicians and Surgeons	§§ 54-1801 — 54-1841
19. Public Works Contractors	§§ 54-1901 — 54-1930
20. Idaho Real Estate License Law	§§ 54-2001 — 54-2097
21. Veterinarians	§§ 54-2101 — 54-2121
22. Practice of Physical Therapy	§§ 54-2201 — 54-2224
23. Psychologists	§§ 54-2301 — 54-2315
24. Drinking Water and Wastewater Professionals Licensing Act	§§ 54-2401 — 54-2414
25. Horse Racing	§§ 54-2501 — 54-2517
26. Plumbing and Plumbers	§§ 54-2601 — 54-2630
27. Scrap Dealers	§§ 54-2701 — 54-2708
28. Geologists	§§ 54-2801 — 54-2822
29. Speech and Hearing Services Practice Act	§§ 54-2901 — 54-2927
30. Landscape Architect Registration and Licensing Act	§§ 54-3001 — 54-3005
31. Certified Shorthand Reporters Act	§§ 54-3101 — 54-3118
32. Social Work Licensing Act	§§ 54-3201 — 54-3217
33. Freedom of Choice of Dentures Act	§§ 54-3301 — 54-3323
34. Counselors and Therapists	§§ 54-3400 — 54-3415
35. Dietitians	§§ 54-3501 — 54-3512
36. Idaho Grape Growers and Wine Producers Commission	§§ 54-3601 — 54-3612
37. Occupational Therapy Practice Act	§§ 54-3701 — 54-3722
38. Board of Cemeterians	§§ 54-3801 — 54-3805
39. Athletic Trainers	§§ 54-3901 — 54-3917
40. Massage Therapists	§§ 54-4001 — 54-4015
41. Idaho Real Estate Appraisers Act	§§ 54-4101 — 54-4119
42. Idaho Residential Care Administrators Act	§§ 54-4201 — 54-4216
43. Respiratory Care Practice Act	§§ 54-4301 — 54-4321
44. Peer Assistance Entity Agreements	§§ 54-4401 — 54-4407
45. Public Works Construction Management Licensing Act	§§ 54-4501 — 54-4514
46. Patient Freedom of Information	§§ 54-4601 — 54-4604
47. Acupuncture	§§ 54-4701 — 54-4713
48. Uniform Athlete Agents Act	§§ 54-4801 — 54-4820
49. Idaho State Bar Lawyer Assistance Program	§§ 54-4901, 54-4902
50. Installation of Heating, Ventilation and Air Conditioning Systems	§§ 54-5001 — 54-5024
51. Naturopathic Physicians Licensing Act	§§ 54-5101 — 54-5118

Chapter		Sections
	52. Idaho Contractor Registration Act	§§ 54-5201 — 54-5219
	53. Idaho Liquefied Petroleum Gas Public Safety Act	§§ 54-5301 — 54-5317
	54. Driving Businesses	§§ 54-5401 — 54-5409
	55. Midwifery	§§ 54-5501 — 54-5513

TITLE 54

PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER.

1. ABSTRACTERS OF TITLE, §§ 54-101 — 54-105.
2. ACCOUNTANTS, §§ 54-201 — 54-228.
3. ARCHITECTS, §§ 54-301 — 54-316.
4. STATE ATHLETIC COMMISSION, §§ 54-401 — 54-422.
5. BARBERS, §§ 54-501 — 54-530.
6. PODIATRISTS, §§ 54-601 — 54-616.
7. CHIROPRACTIC PRACTICE ACT, §§ 54-701 — 54-715.
8. COSMETICIANS, §§ 54-801 — 54-837.
9. DENTISTS, §§ 54-900 — 54-936.
10. ELECTRICAL CONTRACTORS AND JOURNEYMEN, §§ 54-1001 — 54-1020.
11. MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS, §§ 54-1101 — 54-1144.
12. ENGINEERS AND SURVEYORS, §§ 54-1201 — 54-1236.
13. HEALERS IN GENERAL — EDUCATIONAL AND LICENSE REQUIREMENTS. [REPEALED.]
14. NURSES, §§ 54-1401 — 54-1419.
15. OPTOMETRISTS, §§ 54-1501 — 54-1525.
16. NURSING HOME ADMINISTRATORS, §§ 54-1601 — 54-1616.
17. PHARMACISTS, §§ 54-1701 — 54-1771.
18. PHYSICIANS AND SURGEONS, §§ 54-1801 — 54-1841.
19. PUBLIC WORKS CONTRACTORS, §§ 54-1901 — 54-1930.
20. IDAHO REAL ESTATE LICENSE LAW, §§ 54-2001 — 54-2097.
21. VETERINARIANS, §§ 54-2101 — 54-2121.
22. PRACTICE OF PHYSICAL THERAPY, §§ 54-2201 — 54-2224.
23. PSYCHOLOGISTS, §§ 54-2301 — 54-2315.
24. DRINKING WATER AND WASTEWATER PROFESSIONALS LICENSING ACT, §§ 54-2401 — 54-2414.
25. HORSE RACING, §§ 54-2501 — 54-2517.
26. PLUMBING AND PLUMBERS, §§ 54-2601 — 54-2630.
27. SCRAP DEALERS, §§ 54-2701 — 54-2708.
28. GEOLOGISTS, §§ 54-2801 — 54-2822.
29. SPEECH AND HEARING SERVICES PRACTICE ACT, §§ 54-2901 — 54-2927.
30. LANDSCAPE ARCHITECT REGISTRATION AND LICENSING ACT, §§ 54-3001 — 54-3005.
31. CERTIFIED SHORTHAND REPORTERS ACT, §§ 54-3101 — 54-3118.

CHAPTER.

32. SOCIAL WORK LICENSING ACT, §§ 54-3201 — 54-3217.
33. FREEDOM OF CHOICE OF DENTURES ACT, §§ 54-3301 — 54-3323.
34. COUNSELORS AND THERAPISTS, §§ 54-3400 — 54-3415.
35. DIETITIANS, §§ 54-3501 — 54-3512.
36. IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION, §§ 54-3601 — 54-3612.
37. OCCUPATIONAL THERAPY PRACTICE ACT, §§ 54-3701 — 54-3722.
38. BOARD OF CEMETERIANS, §§ 54-3801 — 54-3805.
39. ATHLETIC TRAINERS, §§ 54-3901 — 54-3917.
40. MASSAGE THERAPISTS, §§ 54-4001 — 54-4015.
41. IDAHO REAL ESTATE APPRAISERS ACT, §§ 54-4101 — 54-4119.
42. IDAHO RESIDENTIAL CARE ADMINISTRATORS ACT, §§ 54-4201 — 54-4216.
43. RESPIRATORY CARE PRACTICE ACT, §§ 54-4301 — 54-4321.
44. PEER ASSISTANCE ENTITY AGREEMENTS, §§ 54-4401 — 54-4407.
45. PUBLIC WORKS CONSTRUCTION MANAGEMENT LICENSING ACT, §§ 54-4501 — 54-4514.
46. PATIENT FREEDOM OF INFORMATION, §§ 54-4601 — 54-4604.
47. ACUPUNCTURE, §§ 54-4701 — 54-4713.
48. UNIFORM ATHLETE AGENTS ACT, §§ 54-4801 — 54-4820.
49. IDAHO STATE BAR LAWYER ASSISTANCE PROGRAM, §§ 54-4901, 54-4902.
50. INSTALLATION OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS, §§ 54-5001 — 54-5024.
51. NATUROPATHIC PHYSICIANS LICENSING ACT, §§ 54-5101 — 54-5118.
52. IDAHO CONTRACTOR REGISTRATION ACT, §§ 54-5201 — 54-5219.
53. IDAHO LIQUEFIED PETROLEUM GAS PUBLIC SAFETY ACT, §§ 54-5301 — 54-5317.
54. DRIVING BUSINESSES, §§ 54-5401 — 54-5409.
55. MIDWIFERY. [NULL AND VOID, EFFECTIVE JULY 1, 2014], §§ 54-5501 — 54-5513.

CHAPTER 1

ABSTRACTERS OF TITLE

SECTION.

- 54-101. Abstracters to give bond.
 54-102. Certificate of abstracter — Effect.
 54-103. Use of abstract, title insurance policy
 or title report as evidence —
 Service of copy.

SECTION.

- 54-104. Duration of bond — Additional secu-
 rity.
 54-105. Register of abstracters — Fee for
 certificate.

54-101. Abstracters to give bond. — It shall be a misdemeanor for any person or persons to engage in the business of compiling abstracts of title to real estate in the state of Idaho, and demand and receive pay for the same, without first filing in the office of the county recorder of the county in which such business is conducted, a surety bond to the state of Idaho, in the penal sum of \$10,000, with a surety company authorized to do such business in Idaho as security conditioned for the payment by such abstracters of any or all damages that may accrue to any party or parties, by reason of any error, deficiency or mistake in any abstract or certificate of title, made and issued by such person or persons.

History.

1897, p. 92, § 1; reen. 1899, p. 314, § 1; am.
 1909, p. 456, § 1; reen. R.C. & C.L., § 1411;

C.S., § 2262; I.C.A., § 53-101; am. 1939, ch.
 148, § 1, p. 265.

STATUTORY NOTES

Cross References.

Punishment for misdemeanor where punishment not prescribed, § 18-113.

JUDICIAL DECISIONS

ANALYSIS

Character of abstract business.
 Liability as affected by bond.
 Liability of abstracters.

Character of Abstract Business.

Abstract company, duly and regularly authorized to transact business under laws of this state, which engages in the business of making and selling abstracts of title, thereby represents to purchasers of such abstracts that its employees are competent and qualified to make examinations of the records and to furnish such abstracts, and that they are expert therein, and that purchaser of such abstract may safely rely upon the statements and representations contained in the abstract and certificate thereto. *Hillock v. Idaho Title & Trust Co.*, 22 Idaho 440, 126 P. 612 (1912).

Liability as Affected by Bond.

Party injured may waive right to sue on bond and bring action directly against ab-

stracter. *Merrill v. Fremont Abstract Co.*, 39 Idaho 238, 227 P. 34 (1924).

Right of recovery against abstracter will not be defeated by reason of failure of latter to give required bond. *Merrill v. Fremont Abstract Co.*, 39 Idaho 238, 227 P. 34 (1924).

Liability of Abstracters.

Where abstract company is employed to prepare abstract of title to certain real estate and a mistake is made by it in the preparation of such abstract and the person for whom it is made is damaged thereby, abstract company is liable for all legal damages sustained by such person. *Hillock v. Idaho Title & Trust Co.*, 22 Idaho 440, 126 P. 612 (1912); *Hillock v. Idaho Title & Trust Co.*, 24 Idaho 242, 133 P. 119 (1913); *Merrill v. Fremont Abstract Co.*, 39 Idaho 238, 227 P. 34 (1924).

Abstract company cannot escape liability for damage caused by its failure to show existence of tax deed by claiming that deed was invalid. *Hillock v. Idaho Title & Trust Co.*, 24 Idaho 242, 133 P. 119 (1913).

It was intention to include within protec-

tion of this section any person that might suffer from fraud or mistake of abstractor and who has suffered damages in consequence. *Merrill v. Fremont Abstract Co.*, 39 Idaho 238, 227 P. 34 (1924).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Abstracts of Title, §§ 3, 20.

C.J.S. — 1 C.J.S., Abstracts of Title, § 8 et seq.

A.L.R. — Negligence in preparing abstract of title as ground of liability to one other than person ordering abstract. 50 A.L.R.4th 314.

54-102. Certificate of abstractor — Effect. — When any abstractor shall have duly filed his bond as above provided, he shall be entitled to receive a certificate from such county recorder that said bond has been by him duly approved and filed for record, which certificate shall be valid so long as such abstractor shall maintain his surety upon the bonds as herein provided for unimpaired, and the possession of such valid certificate at the date of issuance of any abstract, policy of title insurance, or title report, shall entitle such abstract of title, policy of title insurance, or title report to real estate, certified to or countersigned and issued by such abstractor, to be received in all courts as prima facie evidence of the existence of the record of deeds, mortgages and other instruments, conveyances, or liens, affecting the real estate mentioned in such abstract, policy of title insurance, or title report, and that such record is as described in said abstract of title, policy of title insurance or title report.

History.

1897, p. 92, § 3; reen. 1899, p. 314, § 3; reen. R.C. & C.L., § 1412; C.S., § 2263;

I.C.A., § 53-102; am. 1939, ch. 148, § 2, p. 265; am. 1963, ch. 202, § 1, p. 591.

JUDICIAL DECISIONS

Sufficiency of Certificate.

Statute does not prescribe any form of certificate to be used by abstractor. Such certificate, however, should state in substance that instrument is true and correct abstract of documents appearing in official records of county. *Jorgenson v. McAllister*, 34 Idaho 182, 202 P. 1059 (1921).

Certificate that abstractor has examined

records as to conveyances named, and that they are executed and acknowledged as shown, is insufficient. *Jorgenson v. McAllister*, 34 Idaho 182, 202 P. 1059 (1921).

Certificate that instrument is a true and correct abstract of conveyances shown on abstractor's own records is insufficient. *Jorgenson v. McAllister*, 34 Idaho 182, 34 Idaho 186, 202 P. 1059 (1921).

54-103. Use of abstract, title insurance policy or title report as evidence — Service of copy. — Any party to a civil action, who may desire to use in evidence at the trial thereof, any abstract of title, policy of title insurance or title report issued by a duly qualified title insurance company in Idaho, to real estate as herein provided, shall furnish to the opposing party or his attorneys a copy of such abstract, title policy or title report at least three (3) days before the trial of said action, and in case such real estate be not in the county where such trial is to take place, then such copy shall be furnished to the opposing party or his attorney, in time to allow a

sufficient number of days for such opposing party to proceed, by the usual route of travel, to the county seat of the county where such real estate may be situated and return to the place of trial, in addition to the three (3) days for preparation above provided for.

History.

1897, p. 92, § 4; reen. 1899, p. 314, § 4; am.
R.C., § 1413; reen. C.L., § 1413; C.S.,

§ 2264; I.C.A., § 53-103; am. 1963, ch. 202,
§ 2, p. 591.

STATUTORY NOTES**Effective Dates.**

Section 3 of S.L. 1963, ch. 202 declared an
emergency. Approved March 25, 1963.

54-104. Duration of bond — Additional security. — The bond herein provided for may run during the continuance of said person or persons in said abstract business, not to exceed five (5) years, and the district judge of the district where the bond herein provided for may be filed may, at any time upon complaint of any owner of real estate in his county, require such abstractor, upon ten (10) days' notice, to give additional security upon said bond, and show cause why the same should not be declared invalid, and the certificate thereof recalled and annulled, and if within such time the additional security, to be approved by said district judge, be not furnished, and there is no sufficient reason to show to the judge why the same should not be required, the said bond shall be declared invalid, and the certificate thereof recalled and cancelled.

History.

1897, p. 92, § 5; reen. 1899, p. 314, § 5;
reen. R.C. & C.L., § 1414; C.S., § 2265;

I.C.A., § 53-104; am. 1939, ch. 148, § 3, p.
265.

54-105. Register of abstractors — Fee for certificate. — The county recorder shall be provided with a suitable register, for entering and registering the names of all abstractors who qualify and receive a certificate, and shall be entitled to a fee of two dollars (\$2.00) for each and every certificate so issued.

History.

1897, p. 92, § 2; reen. 1899, p. 314, § 2;
reen. R.C. & C.L., § 1416; C.S., § 2267;

I.C.A., § 53-106; am. 1939, ch. 148, § 4, p.
265.

CHAPTER 2

ACCOUNTANTS

SECTION.

- 54-201. Short title.
- 54-202. Legislative intent.
- 54-203. Board created — Membership — Appointment — Vacancies.
- 54-204. Powers and duties.
- 54-205. Meetings — Compensation — Executive director.

SECTION.

- 54-206. Definitions.
- 54-207. License — Application.
- 54-208. Examination — Education — Qualifications.
- 54-209. Experience.
- 54-210. Reciprocity — Transfer of examination grades — Foreign reci-

SECTION.

procity — Qualifications.
 54-211. Licenses — Licensing period —
 Nonrenewal — Reinstatement
 — Inactive licenses — Retirement — Fees.
 54-212. General fees.
 54-213. Grandfather clause.
 54-214. Firm registration — Peer review.
 54-215, 54-216. [Repealed.]
 54-217. State board of accountancy account.
 54-218. Acceptance of commissions and contingent fees.
 54-218A. [Repealed.]
 54-219. License — Restriction, revocation,

SECTION.

suspension or denial —
 Causes — Cost recovery — Administrative penalties.
 54-220. Use of title — Valid license to practice.
 54-221. Issuance of a report.
 54-222. Violation of chapter a misdemeanor.
 54-223. Injunction.
 54-224. Judicial review.
 54-225. Prosecuting attorney — Attorney general.
 54-226. Inapplicability of chapter.
 54-227. Substantial equivalency.
 54-228. Construction — Severability.

54-201. Short title. — This chapter shall be known and may be cited as “The Idaho Accountancy Act.”

History.

I.C., § 54-201, as added by 1974, ch. 263,

§ 2, p. 1686; am. 1976, ch. 267, § 1, p. 895; am. 2002, ch. 92, § 1, p. 233.

STATUTORY NOTES**Cross References.**

Incorporation of professional service corporations, §§ 30-1301 to 30-1315.

Prior Laws.

Former §§ 54-201 to 54-218, 54-220 to 54-223, which comprised 1963, ch. 284, §§ 1 to 18, 20 to 23; 1972, ch. 242, §§ 1, 2; 1974, ch. 13, §§ 16 to 25, were repealed by S.L. 1974, ch. 263, § 1.

An earlier law on accountancy which comprised 1917, ch. 126, §§ 2 to 5, p. 415; compiled and reen. C.L., 91:2 to 91:5; C.S., §§ 2218 to 2221; I.C.A., §§ 53-201 to 53-204; am. 1939, ch. 73, § 1, p. 126; am. 1951, ch. 28, § 1, p. 40; am. 1951, ch. 168, § 1, p. 365; am. 1957, ch. 64, § 1, p. 107 was repealed in its entirety by Acts 1961, ch. 233, § 10. The 1961 Act which was compiled as §§ 54-201 to 54-209 was repealed in its entirety by Acts 1963, ch. 284, § 25.

1917, ch. 126, §§ 2 to 5, p. 415; compiled and reen. C.L., 91:2 to 91:5; C.S., §§ 2218 to 2221; I.C.A., §§ 53-201 to 53-204; am. 1939, ch. 73, § 1, p. 126; am. 1951, ch. 28, § 1, p. 40; am. 1951, ch. 168, § 1, p. 365; am. 1957, ch. 64, § 1, p. 107 was repealed in its entirety by Acts 1961, ch. 233, § 10. The 1961 Act which was compiled as §§ 54-201 to 54-209 was repealed in its entirety by Acts 1963, ch. 284, § 25.

OPINIONS OF ATTORNEY GENERAL

It is constitutional under the First and Fourteenth amendments of the United States Constitution and under Idaho Const., Art. I, §§ 1, 9, and 13 to restrict the use of the word

“accountant” and other labels or titles to individuals who have been certified and licensed by the state board of accountancy. OAG 86-1.

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Accountants, § 1 et seq.

A.L.R. — Liability of independent accountant to investors or shareholders. 35 A.L.R.4th 225.

Application of statute of limitations to ac-

tions for breach of duty in performing services of public accountant. 7 A.L.R.5th 852.

Privileged communications between accountant and client. 33 A.L.R.4th 539; 36 A.L.R. Fed. 686.

54-202. Legislative intent. — It is the policy of this state, and the purpose of this chapter, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial and governmental enterprises. The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability

or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications shall not be permitted to hold themselves out as having special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

History.

I.C., § 54-202, as added by 1993, ch. 239,
§ 2, p. 824; am. 2002, ch. 92, § 2, p. 233.

STATUTORY NOTES**Prior Laws.**

Former § 54-202, which comprised I.C.,
§ 54-202, as added by 1974, ch. 263, § 2, p.
1686; am. 1976, ch. 267, § 2, p. 895, was

repealed by S.L. 1993, ch. 239, § 1, effective
July 1, 1993.

Another former § 54-202 was repealed. See
Prior Laws, § 54-201.

OPINIONS OF ATTORNEY GENERAL

It is constitutional under the First and
Fourteenth amendments of the United States
Constitution and under Idaho Const., Art. I,
§§ 1, 9, and 13 to restrict the use of the word

"accountant" and other labels or titles to indi-
viduals who have been certified and licensed
by the state board of accountancy. OAG 86-1.

54-203. Board created — Membership — Appointments — Vacancies. — There is hereby created in the department of self-governing agencies a board of accountancy in and for the state of Idaho, to be known as the Idaho state board of accountancy. The board shall consist of seven (7) members, all of whom shall be residents of this state, appointed by the governor, five (5) of whom shall hold current certified public accountant licenses issued under the laws of this state, one (1) who shall be either a licensed public accountant or certified public accountant and one (1) public member not licensed under this chapter, who has professional or practical experience in the use of accounting services and financial statements. Board members shall be appointed for terms of five (5) years to commence on the first day of September. The existing members of the Idaho state board of accountancy as previously appointed, shall continue in office with their terms expiring on August 31 of each member's final year. Whenever the term for a member of the board holding one (1) of the seats on the board originally appointed from nominations of the Idaho society of certified public accountants expires or becomes vacant for any cause, the Idaho society of certified public accountants shall nominate two (2) persons with qualifications to become a member of the board as herein specified, for each such vacancy. Whenever the term for a member holding the position on the board originally appointed from nominations of the Idaho association of public accountants expires or becomes vacant for any cause, the Idaho association of public accountants shall nominate two (2) persons with qualifications to

become a member of the board as herein specified, for each such vacancy. Nominations shall be forwarded to the governor who shall appoint from such nominees the requisite number of persons to be members of the board to fill such vacancy or vacancies. Whenever the term for the public member on the board expires or becomes vacant for any cause, the governor shall appoint a nonlicensed person to become a member of the board without receiving official nominees from any source. Vacancies occurring during the term shall be filled by appointment by the governor for the unexpired term. Upon expiration of the term of office, a member shall continue to serve until a successor shall have been appointed and shall have qualified.

History.

I.C., § 54-203, as added by 1993, ch. 239, § 33, p. 824; am. 2002, ch. 92, § 3, p. 233.

STATUTORY NOTES

Prior Laws.

Former § 54-203, which comprised I.C., § 54-203, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 3, p. 895, was repealed by S.L. 1993, ch. 239, § 32, effective July 1, 1993.

Another former § 54-203 was repealed. See Prior Laws, § 54-201.

Compiler's Notes.

For more on the Idaho society of certified public accountants, see <http://www.idcpa.org>.

For more on the Idaho association of public accountants, see <http://www.iapacct.com>.

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Accountants, §§ 2, 3.

54-204. Powers and duties. — The Idaho state board of accountancy, in addition to the other powers and duties set forth in this chapter, shall have the following powers and duties:

(1) To adopt and amend rules in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code, governing its administration and the enforcement of this chapter and the conduct of licensees including, but not limited to:

- (a) Rules governing the board's meetings and the conduct of its business;
- (b) Rules of procedure governing the conduct of investigations and hearings by the board;
- (c) Rules specifying the education, examination and experience qualifications required for the issuance of certificates, and the continuing professional education required for renewal of licenses;
- (d) Rules of professional conduct directed to controlling the quality and probity of professional services by licensees, and dealing among other things with independence, integrity and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to clients;
- (e) Rules governing the professional standards applicable to licensees;
- (f) Rules governing the manner and circumstances of use of the titles "certified public accountant" and "licensed public accountant";

(g) Rules regarding peer reviews that may be required to be performed under the provisions of this chapter;

(h) Rules on substantial equivalency to implement section 54-227, Idaho Code;

(i) Rules adopting statements on standards as specified in section 54-206, Idaho Code, which, if the board may deem appropriate, shall be those standards developed for general application by recognized accountancy organizations such as the AICPA, as such statements are established from time to time; and

(j) Such other rules as the board may deem necessary or appropriate to implement or administer the provisions and purposes of this chapter.

(2) To issue original certificates of qualification and licenses to practice as certified public accountants to such applicants as may be qualified by reciprocity, transfer of examination grades or by examination.

(3) To charge and collect from all applicants, certificate holders, and licensees such fees as are provided by this chapter and prescribed by rules of the board.

(4) To initiate or receive complaints, cause the same to be investigated, initiate proceedings, and conduct hearings or proceedings pursuant to chapter 2, title 54, Idaho Code. The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the board. Unless dismissed by the board as unfounded or trivial, the board may proceed with disciplinary proceedings or may return the report to the investigating officer for further investigation.

(a) In order to protect the interests of a complainant, witness, third party or defendant, the board may upon application and for good cause shown, issue a protective order, consistent with chapter 3, title 9, Idaho Code, prohibiting the disclosure of specific information otherwise not privileged and confidential and direct that the proceedings be conducted so as to implement the order.

(b) In carrying into effect the provisions of this chapter, the board may subpoena witnesses and compel their attendance, and also may require the submission of books, papers, documents or other pertinent data; may administer oaths; may take testimony; may cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of this chapter and comparable acts of other states; and may receive evidence in any disciplinary matters or in any case wherever a violation of the provisions of this chapter is alleged. Upon failure or refusal to comply with any such order of the board, or upon failure to honor its subpoena, the board may apply to the court in the district where the witness resides to enforce compliance.

(5) To authorize by written agreement the bureau of occupational licenses as agent to act in its interest.

(6) Any action, claim or demand to recover money damages from the board or its employees which any person is legally entitled to recover as compensation for the negligent or otherwise wrongful act or omission of the

board or its employees, when acting within the course and scope of their employment, shall be governed by the Idaho tort claims act, chapter 9, title 6, Idaho Code. For purposes of this subsection, the term "employees" shall include special assignment members of the board and other independent contractors while acting within the course and scope of their board related work.

(7) All hearings, investigations or proceedings conducted by the board shall be conducted in conformity with chapter 52, title 67, Idaho Code, and rules of the board adopted pursuant thereto, and, unless otherwise requested by the concerned party, be subject to disclosure according to chapter 3, title 9, Idaho Code.

History.

I.C., § 54-204, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 4, p. 895; am. 1990, ch. 213, § 73, p. 480; am. 1991, ch. 30, § 8, p. 58; am. 1991, ch. 30, § 9, p. 58; am.

1993, ch. 239, § 3, p. 824; am. 1994, ch. 49, § 1, p. 81; am. 1995, ch. 134, § 1, p. 580; am. 1999, ch. 30, § 13, p. 41; am. 2002, ch. 92, § 4, p. 233; am. 2008, ch. 128, § 1, p. 350.

STATUTORY NOTES

Prior Laws.

Former § 54-204 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, updated the section reference in paragraph (1)(i) in light of 2008 legislation.

Compiler's Notes.

Section 16 of S.L. 1991, ch. 30 read: "DISPOSITION OF RECORDS. (a) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was duplicated by filing with another state agency, the secretary of state may destroy those documents in his files.

"(b) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was not duplicated by filing with another state agency, the secretary of state may transfer those docu-

ments to the state historical library if it is determined that they have historical significance, and otherwise may destroy them.

"(c) Whenever this act has transferred the place of filing for a type of document from the secretary of state to another agency, the secretary of state and the head of the other agency may thereafter agree to transfer those documents filed before the effective date of this act to the agency which has acquired filing responsibility."

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the 1990 act should take effect July 1, 1993, and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

Section 17 of S.L. 1991, ch. 30 provided that the amendment of this section would be in full force and effect on and after July 1, 1993.

OPINIONS OF ATTORNEY GENERAL

It is constitutional under the First and Fourteenth amendments of the United States Constitution and under Idaho Const., Art. I, §§ 1, 9, and 13 to restrict the use of the word

"accountant" and other labels or titles to individuals who have been certified and licensed by the state board of accountancy. OAG 86-1.

54-205. Meetings — Compensation — Executive director. — The board shall have its principal office in Ada county. Four (4) members of the board shall constitute a quorum, a majority of whom may act. The board shall meet no less than three (3) times each year; provided, however, special meetings may be called at any time during the year after notice to all members of the board of such special meetings. The board shall elect annually a chair, a vice chair, a secretary and a treasurer from its members.

The offices of secretary and treasurer may be in the same person. The members of the board shall be compensated as provided by section 59-509(i), Idaho Code.

The board shall have the power to name an executive director who need not be a member of the board or a licensee and who may be a full-time or part-time employee of the state of Idaho. The board shall prescribe the duties of the executive director. Such duties shall include but are not limited to:

- (1) Maintenance of a licensee registry;
- (2) The preparation of all papers and records for the board; and
- (3) Enforcement or investigative activities as directed by the board.

History.

I.C., § 54-205, as added by 1974, ch. 263, am. 1980, ch. 247, § 49, p. 582; am. 1993, ch. 239, § 4, p. 824; am. 1994, ch. 49, § 2, p. 81; § 2, p. 1686; am. 1976, ch. 267, § 5, p. 895; am. 2001, ch. 183, § 21, p. 613.

STATUTORY NOTES

Prior Laws.

Former § 54-205 was repealed. See Prior Laws, § 54-201.

54-206. Definitions. — As used in this chapter:

- (1) "AICPA" means the American institute of certified public accountants.
- (2) "Applicant" means any person having the requisite qualifications who makes application to the board for examination, or for initial issuance or renewal or reinstatement of a license under the provisions of this chapter.
- (3) "Attest" means providing the following financial statement services:
 - (a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;
 - (b) Any review of a financial statement to be performed in accordance with the statements on standards for accounting and review services; and
 - (c) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements.
- (4) "Board" means the Idaho state board of accountancy.
- (5) "Certificate" means that document issued by the board upon original approval of licensure. The original certificate does not constitute licensure and a person cannot represent himself or herself as a licensee unless a current and valid annual license has been issued by the board.
- (6) "Certified public accountant" or "CPA" means any person who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, or an equivalent provision of the laws of another state designating said person as a certified public accountant.
- (7) "Client" means the person or entity that agrees with a licensee or licensee's employer to receive any professional services with or without compensation and shall include all affiliates and related entities in the financial statements of an attest or compilation engagement.
- (8) "Compilation" means a service performed in accordance with statements on standards for accounting and review services which presents, in

the form of historical or prospective financial statements, information that is the representation of management or owners without undertaking to express any assurance on the statements. The term "compilation" does not include financial statements accompanied by the language set forth in section 54-226(3), Idaho Code, whether used by a licensee or by a person not licensed under this chapter, so long as the financial statements are not accompanied by any other language of assurance or disclaimer.

(9) "Financial statements" means a presentation of historical or prospective financial data, which may include accompanying notes, intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with a comprehensive basis of accounting.

(10) "Firm" means a proprietorship, partnership, professional corporation, professional limited liability company, or any other form of professional organization permitted by Idaho law, registered under the requirements of section 54-214, Idaho Code.

(11) "Good moral character" means lack of a history of dishonest dealings or a felonious act.

(12) "License" means that authorization issued by the board upon original approval and on an annual basis permitting a qualified person to practice as a certified public accountant or licensed public accountant in the state of Idaho.

(13) "Licensed public accountant" or "LPA" means any person who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, designating said person as a licensed public accountant.

(14) "Licensee" means the holder of a current valid license.

(15) "Member" means a person who has been admitted to membership in a firm which is organized as a limited liability company.

(16) "Peer review" means a board approved study, appraisal or review of one (1) or more aspects of the professional work of a licensee or firm that performs attest services or issues compilation reports, by a person or persons licensed under this chapter or by another state and who are independent of the licensee or firm being reviewed.

(17) "Permit" means a permit to practice as a firm issued under corresponding provisions of the laws of other states.

(18) "Person" means any natural living person.

(19) "Professional services" means services arising out of or related to the specialized knowledge or skills associated with certified public accountants or licensed public accountants.

(20) "Report," when used with reference to financial statements, means an opinion or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself.

The term “report” includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or special knowledge or competence.

(21) “State” means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands and Guam; except that “this state” means the state of Idaho.

(22) “Substantial equivalency” or “substantially equivalent” means a determination by the board that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed the education, examination and experience requirements for CPAs contained in this chapter or that an individual licensee’s education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements for CPAs contained in this chapter.

History.

I.C., § 54-206, as added by 1993, ch. 239, § 6, p. 824; am. 1995, ch. 134, § 2, p. 580; am.

2002, ch. 92, § 5, p. 233; am. 2003, ch. 14, § 1, p. 31; am. 2008, ch. 128, § 2, p. 352.

STATUTORY NOTES

Prior Laws.

Former § 54-206, which comprised I.C., § 54-206, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 6, p. 895; am. 1986, ch. 128, § 1, p. 331, was repealed by S.L. 1993, ch. 239, § 5, effective July 1, 1993.

Another former § 54-206 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, in the

introductory language, substituted “chapter” for “section”; in subsection (6), inserted “or ‘CPA’”; and in subsection (21), inserted “Commonwealth of the Northern Mariana Islands.”

Compiler’s Notes.

For more on the American institute of certified public accounts, see <http://www.aicpa.org>.

54-207. License — Application. — (1) Any person desiring a certificate and license shall make a written application for such certificate and license to the board, upon forms to be prescribed and furnished by the board. Such application shall be filed and shall be accompanied by such fee as may be required by rules of the board.

(2) In addition to meeting the qualifications provided elsewhere in this chapter, before a certificate and license may be issued, a person desiring to receive a certificate and license shall have satisfactorily completed a minimum of one hundred fifty (150) semester hours, or two hundred twenty-five (225) quarter hours, of college education, with a concentration in accounting, auditing and business, including a baccalaureate or higher degree at a college or university acceptable to the board, as established by rule. Satisfactory evidence in the form of an official transcript received directly from the school registrar indicating the credits and degree received

shall be presented to the board to demonstrate successful completion of these education requirements.

(3) The board may adopt rules allowing persons who met the education requirements of section 54-208, Idaho Code, when they first sat for the examination to become licensed even though they do not meet the education requirements of this section.

History.

I.C., § 54-207, as added by 1974, ch. 263, § 2, p. 1686; am. 1994, ch. 49, § 3, p. 81; am. 2002, ch. 92, § 6, p. 233.

STATUTORY NOTES

Prior Laws.

Former § 54-207 was repealed. See Prior Laws, § 54-201.

54-208. Examination — Education — Qualifications. — (1) An applicant for admission to examination as a certified public accountant shall:

- (a) Be eighteen (18) years of age or older;
- (b) Be of good moral character;
- (c) Be a resident, have been a resident, or intend to immediately become a resident of the state of Idaho;
- (d) Be approved by the board for admission to the examination; and
- (e) Provide satisfactory evidence in the form of an official transcript received directly from the school registrar indicating successful completion of a baccalaureate degree or its equivalent, the required credits and courses to be prescribed by the rules of the board.

(2) The examination required to be passed as a condition to granting a certificate shall test the applicant's knowledge of the subjects of accounting and auditing, and such other related subjects as the board may specify by rule, including, but not limited to, business law and taxation. The time for holding such examination shall be determined by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading and determining a passing grade required of an applicant for a certificate; provided however, that the board shall endeavor to assure that the examination itself, grading of the examination, and the passing grades, are uniform with those of other states. The board may make use of all or any part of the uniform certified public accountant examination and advisory grading service of the AICPA and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties hereunder.

(3) The board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the board by rule.

(4) None of the education requirements specified in this section shall apply to an applicant who is a licensed public accountant pursuant to this chapter.

History.

I.C., § 54-208, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 7, p. 895;

am. 1993, ch. 239, § 7, p. 824; am. 2002, ch. 92, § 7, p. 233; am. 2008, ch. 128, § 3, p. 354.

STATUTORY NOTES**Prior Laws.**

Former § 54-208 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, in paragraph (1)(e), deleted the last sentence, which read: "Applicants who will complete the educational requirements within ninety (90) days of the examination may be allowed to sit for the examination provided that prior to the release of examination grades satisfactory

evidence is submitted verifying that the required education was completed within ninety (90) days of the examination"; and in the first sentence in subsection (2), deleted "shall be held at least twice each year, and" following "certificate."

Compiler's Notes.

For more on the American institute of certified public accounts, see <http://www.aicpa.org>.

54-209. Experience. — An applicant of good moral character who successfully passes the examination, with standards no less than those prescribed by the board's rules for examination of candidates in Idaho, and who fulfills the requirements of section 54-207, Idaho Code, shall receive a license as a certified public accountant if the applicant has completed one (1) year of experience. This experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, all of which have been verified by an active licensee, meeting requirements prescribed by the board by rule. This experience may be gained through employment in government, industry, academia or public practice.

History.

I.C., § 54-209, as added by 1993, ch. 239, § 9, p. 824; am. 1994, ch. 49, § 4, p. 81; am.

2002, ch. 92, § 8, p. 233; am. 2008, ch. 128, § 4, p. 355.

STATUTORY NOTES**Prior Laws.**

Former § 54-209, which comprised I.C., § 54-209, as added by 1974, ch. 263, § 2, p. 1686, was repealed by S.L. 1993, ch. 239, § 8, effective July 1, 1993.

Another former § 54-209 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, inserted "active" in the second sentence.

54-210. Reciprocity — Transfer of examination grades — Foreign reciprocity — Qualifications. — (1) A person whose certificate and license have been granted by another state, whose principal place of business is located in this state, shall obtain a license by reciprocity from the board before providing professional services in this state.

(2)(a) An applicant for certificate and license by reciprocity to practice as a certified public accountant in Idaho must:

- (i) Be eighteen (18) years of age or older;
- (ii) Be of good moral character;

- (iii) Have obtained the education and passed the uniform CPA examination with standards no less than those required in Idaho; and
- (iv) Have completed the necessary experience, continuing professional education, and board approved ethics examination required for issuance of a license in Idaho and hold a current license in good standing in another licensing jurisdiction.

(b) The requirements of subsection (2)(a) of this section relating to education, Idaho standards relating to passage of the uniform CPA examination, experience, continuing professional education and ethics examination shall be waived if the applicant has been licensed for no less than four (4) years as a certified public accountant within the ten (10) years immediately preceding the reciprocity application.

(3)(a) A person holding an inactive or retired certificate and license granted by another state, whose principal place of business is located in this state, may apply for an equivalent license by reciprocity from the board, provided the applicant must:

- (i) Meet the requirements for an inactive license as set forth in section 54-211(1)(c), Idaho Code, or the requirements for a retired license as set forth in section 54-211(1)(d), Idaho Code;
- (ii) Be of good moral character;
- (iii) Have obtained the education and passed the uniform CPA examination with standards no less than those required in Idaho; and
- (iv) Have completed the necessary experience and board approved ethics examination required for issuance of a license in Idaho.

(b) The requirements of subsection (3)(a) of this section relating to education, Idaho standards relating to passage of the uniform CPA examination, experience and ethics examination shall be waived if the applicant has been licensed for no less than four (4) years as a certified public accountant within the ten (10) years immediately preceding the reciprocity application.

(4) An applicant for certificate and license to practice as a certified public accountant in Idaho by transfer of examination grades from another licensing jurisdiction must:

- (a) Be eighteen (18) years of age or older;
- (b) Be of good moral character;
- (c) Have obtained the necessary education and have passed the uniform CPA examination with standards no less than those prescribed by the board's rules for examination candidates in Idaho; and
- (d) Possess experience qualifications as required under section 54-209, Idaho Code, and complete a board approved ethics examination required for issuance of a license in Idaho.

(5) The board shall issue a certificate and license to a holder of a substantially equivalent designation issued by a foreign country, provided that:

- (a) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid certificate and license issued by this state to obtain such foreign authority's comparable designation; and

(b) The designation:

- (i) Was duly issued by an authority of a foreign country which regulates the practice of public accountancy and has not expired or been revoked or suspended;
- (ii) Entitles the holder to issue reports upon financial statements; and
- (iii) Was issued upon the basis of substantially equivalent educational, examination and experience requirements established by the foreign authority or by law; and

(c) The applicant:

- (i) Received the designation, based on educational and examination standards substantially equivalent to those in effect in this state, at the time the foreign designation was granted;
- (ii) Completed an experience requirement, substantially equivalent to the requirements set out in this chapter, in the jurisdiction which granted the foreign designation or has completed four (4) years of professional experience in this state; or meets equivalent requirements prescribed by the board by rule, within the ten (10) years immediately preceding the application;
- (iii) Passed a uniform qualifying examination in national standards acceptable to the board; and
- (iv) Is of good moral character.

History.

I.C., § 54-210, as added by 1993, ch. 239, § 11, p. 824; am. 1994, ch. 49, § 5, p. 81; am.

2002, ch. 92, § 9, p. 233; am. 2003, ch. 14, § 2, p. 31; am. 2008, ch. 128, § 5, p. 355.

STATUTORY NOTES**Prior Laws.**

Former § 54-210, which comprised I.C., § 54-210, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 8, p. 895, was repealed by S.L. 1993, ch. 239, § 10, effective July 1, 1993.

Another former § 54-210 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, in subsections (2)(b) and (3)(b), inserted "been licensed for," and deleted "experience as determined by the board, provided that the experience or its equivalent was obtained after original licensure" preceding "as a certified public accountant."

54-211. Licenses — Licensing period — Nonrenewal — Reinstatement — Inactive licenses — Retirement — Fees. — (1) The board shall issue initial certificates and licenses, and renewal and reinstatement licenses to practice as a certified public accountant, and renewal and reinstatement licenses to practice as a licensed public accountant to persons who have qualified therefor in accordance with the provisions of this chapter and the rules of the board. A certificate and license, once issued, shall continue in effect so long as the holder thereof complies with the provisions of this chapter and the rules and orders of the board.

- (a) Initial. The board shall collect an initial license fee upon board approval of an initial license to practice as a certified public accountant in the state of Idaho as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. Those individuals meeting the requirements for initial licensure in Idaho, pursuant to the provisions of

this chapter and the rules of the board, shall be issued a license effective for no more than twelve (12) months. The license shall then be subject to annual renewal.

(b) **Renewal.** The board shall collect an annual license fee from all licensees each year as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. Those persons meeting the requirements of this subsection for license renewal shall be issued a license effective for a period of one (1) year after its issuance. Requirements include:

- (i) Good moral character;
- (ii) Completion of continuing professional education as specified by the board's rules;
- (iii) Identification, in the renewal application, of the firm with which the licensee is affiliated; and
- (iv) Where applicable, verification of satisfactory completion of a peer review program by the firm with which the licensee is affiliated, pursuant to section 54-214, Idaho Code, and the rules prescribed by the board. Any licensee who issues compilation reports for the public other than through a firm must undergo no more frequently than once every three (3) years, a peer review conducted in accordance with rules prescribed by the board, and such review shall include verification that such licensee has met the competency requirements set out in professional standards for such service.

(c) **Inactive status.** Any licensee in current compliance with the provisions of this chapter who chooses not to perform or offer to perform for the public one (1) or more kinds of attest or compilation services may apply to place his or her license in inactive status. The annual renewal fee for inactive status shall be as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. Licensees with inactive status must place the word "inactive" adjacent to their CPA or LPA title on any business card, letterhead or any other document or device when using the title, with the exception of their certificate on which their title appears.

(d) **Retired.** After a person reaches the age of fifty-five (55) years, or in the event of a disability preventing continued practice, the certificate of a certified public accountant or licensed public accountant, upon application to the board by the holder, may be placed by the board in retired status. Retired status shall allow the holder to retain the wall certificate and remain on the board's mailing list. The annual renewal fee for retired status shall be as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. Licensees with retired status must place the word "retired" adjacent to their CPA or LPA title on any business card, letterhead or any other document or device when using the title, with the exception of their certificate on which their title appears. An individual who performs or offers to perform for the public attest or compilation services shall not qualify for retired status.

(e) **Nonrenewal.** A licensee may place the license into lapsed status as prescribed by the rules of the board rather than renew the license. Any license not renewed or placed into lapsed status within thirty (30) days

after the expiration of the previous license shall be automatically placed into lapsed status.

(f) Reinstatement. Any certificate and license placed in lapsed status may be reinstated upon completion of an application supplied by the board along with payment of a reinstatement fee as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. In addition, the board shall require the applicant to meet the qualifications of subsection (b) of this section. Reinstatement following involuntary suspension shall be governed by the terms of the board's order of involuntary suspension.

(g) Reentry. A license in inactive or retired status may reenter active status upon completion of an application supplied by the board along with payment of a reentry fee as prescribed by the rules of the board. In addition, the board shall require the applicant to meet the qualifications set forth in subsection (1)(b) of this section.

(2) Applicants for initial issuance or reinstatement of licenses under this section shall in their application list all states in which they have applied for or hold a license and list any past disciplinary action against or denial, revocation or suspension of a certificate, license or permit.

(3) Applicants and licensees shall notify the board in writing, within thirty (30) days after its occurrence of:

(a) Any charges or convictions of, or guilty pleas to, a felony; or

(b) Any disciplinary action against or the denial, restriction, revocation or suspension of a certificate, license or permit by another state or by any federal agency.

History.

I.C., § 54-211, as added by 1993, ch. 239, § 13, p. 824; am. 2002, ch. 92, § 10, p. 233;

am. 2003, ch. 14, § 3, p. 31; am. 2008, ch. 128, § 6, p. 357.

STATUTORY NOTES

Prior Laws.

Former § 54-211, which comprised I.C., § 54-211, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 9, p. 895; am. 1991, ch. 23, § 1, p. 47, was repealed by S.L. 1993, ch. 239, § 12, effective July 1, 1993.

Another former § 54-211 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, substituted "fifty-five (55) years" for "sixty (60) years" in paragraph (1)(d).

54-212. General fees. — The board, as prescribed by its rules, may charge an amount not to exceed:

(1) One thousand dollars (\$1,000) for examination.

(2) Three hundred dollars (\$300) for licensure application or license renewal.

(3) Twenty-five dollars (\$25.00) for any certificate, original or replacement, to be issued as herein provided.

(4) Fifty dollars (\$50.00) for administrative services, including, but not limited to, mailing lists and release of information to other boards for purposes of licensure.

(5) One hundred dollars (\$100) for retired or inactive status licenses.

(6) Five hundred dollars (\$500) for license reinstatement.

(7) Three hundred dollars (\$300) for late fees, including late filing of the annual license renewal.

(8) Three hundred dollars (\$300) for late fees, including late filing of the continuing professional education report.

(9) Two hundred dollars (\$200) for firm registration.

History.

I.C., § 54-212, as added by 1993, ch. 239, § 14, p. 824; am. 1994, ch. 49, § 6, p. 81; am.

1995, ch. 134, § 3, p. 580; am. 2002, ch. 92, § 11, p. 233; am. 2008, ch. 128, § 7, p. 358.

STATUTORY NOTES

Prior Laws.

Former § 54-212 was amended and redesignated as § 54-213 by § 16 of S.L. 1993, ch. 239.

Another former § 54-212 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, deleted former subsection (10), which read: "Fifty dollars (\$50.00) for notification of intent to enter the state pursuant to section 54-227, Idaho Code."

54-213. Grandfather clause. — Individuals who, on July 1, 2008, hold certified public accountant and licensed public accountant licenses heretofore issued under the laws of this state, shall, for all purposes, be considered licensees under this chapter and subject to the provisions thereof.

History.

I.C., § 54-212, as added by 1974, ch. 263, § 2, p. 1686; am. and redesign. 1993, ch. 239,

§ 16, p. 824; am. 2002, ch. 92, § 12, p. 233; am. 2008, ch. 128, § 8, p. 359.

STATUTORY NOTES

Prior Laws.

Former § 54-213, which comprised I.C., § 54-213, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 10, p. 895, was repealed by S.L. 1993, ch. 239, § 15, effective July 1, 1993.

Another former § 54-213 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, substituted "July 1, 2008" for "July 1, 2002."

Compiler's Notes.

This section was formerly compiled as § 54-212.

54-214. Firm registration — Peer review. — (1) The board shall register firms that make application and demonstrate their qualifications therefor in accordance with the following subsections of this section or to firms originally licensed in another state that establish an office in this state. A firm must be registered with the board in order to provide attest services or compilation reports or in order to use the titles "CPAs," "CPA firm," "LPAs" or "LPA firm." Firms must register with the board annually on such form and between such dates as the board may specify by rule. The board may charge a fee for each registration for initial issuance or renewal of a registration under this section as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board.

(2) An applicant for initial registration or renewal of a registration to practice under this section shall demonstrate that:

(a) Notwithstanding any other provision of law, a simple majority of the

beneficial ownership of the firm belongs to holders of a certificate who are licensed in some state, and such partners, officers, shareholders, members or managers, whose principal place of business is in this state, and who perform professional services in this state, hold a valid certificate and license issued by this state. Although a firm may include nonlicensee owners the firm and its ownership must comply with rules promulgated by the board.

(b) Any firm may include nonlicensee owners provided that:

(i) The firm designates a licensee of this state, who is responsible for the proper registration of the firm and identifies that individual to the board.

(ii) All nonlicensees are active individual participants in the firm or affiliated entities.

(iii) The firm complies with such other requirements as the board may impose by rule.

(c) Any licensee who is responsible for supervising attest services or compilation reports or who signs or authorizes someone to sign a report on financial statements on behalf of the firm, shall meet the competency requirements of the professional standards for such services.

(3) Firms registered to practice under this section shall be required to register each office of the firm within this state with the board and to show that all attest and compilation reports rendered in this state are under the charge of a person holding a valid certificate and license issued by this state or some other state.

(4) A firm registering under this section shall list all states in which it has applied for or holds permits as a firm and list any past denial, revocation or suspension of a permit by any other state. Each firm registered under this section shall notify the board in writing, within thirty (30) days following any change in the identities of partners, officers, shareholders or members whose principal place of business is in this state, any change in the number or location of offices within this state, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation or suspension of a permit by any other state.

(5) Firms which fall out of compliance with the provisions of this section due to changes in firm ownership or personnel, after registration, shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as defined by the board may result in penalties as prescribed by board rule.

(6) As a condition of registration renewal under this section, the board, by rule, shall require firms to comply with peer review requirements as specified by rule. Such review shall include a verification that individuals in the firm who are responsible for supervising attest and compilation reports and who sign or authorize someone to sign a report on financial statements on the behalf of the firm meet the competency requirements set out in the professional standards for such services. The rules concerning peer review shall require:

(a) Peer reviews to be subject to oversight by an oversight body established by board rule which will periodically report to the board on the effectiveness of the review program under its charge, and provide to the board a listing of firms that have participated in a peer review program that is satisfactory to the board; and

(b) The confidentiality of client records involved in the peer review process shall be preserved in accordance with the accountancy rules.

History.

I.C., § 54-214, as added by 1993, ch. 239, § 17, p. 824; am. 2002, ch. 92, § 13, p. 233;

am. 2003, ch. 14, § 4, p. 31; am. 2008, ch. 128, § 9, p. 359.

STATUTORY NOTES

Prior Laws.

Another former § 54-214 was repealed. See Prior Laws, § 54-201.

Amendments.

The 2008 amendment, by ch. 128, rewrote paragraph (6)(b), which formerly read: "The peer review processes to be operated and documents maintained in a manner designed to preserve confidentiality, and that neither the board nor any third party, other than the oversight body, shall have access to documents furnished or generated in the course of the review"; and deleted subsection (7), which read: "Information discovered solely as a result of a firm's peer review shall not be grounds for suspension or revocation of a license."

Compiler's Notes.

Former § 52-214 [54-214] was amended and redesignated as § 54-215 by § 18 of S.L. 1993, ch. 239 and then repealed by S.L. 2002, ch. 92, § 14.

Effective Dates.

Section 35 of S.L. 1993, ch. 239 read: "Section 17 of this act shall not become effective until one (1) year after the legislature has reviewed and approved the rules of the Idaho State Board of Accountancy for the implementation of Section 54-214, Idaho Code." The legislature adopted H.C.R. 6 (S.L. 1995, p. 1342) to approve the rules on February 23, 1995. Thus this section became effective February 23, 1996.

54-215, 54-216. Public accountants — Registration — Temporary practice. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 2002, ch. 92, § 14:

54-215 which comprised I.C., § 52-214 [54-214], as added by 1976, ch. 267, § 11, p. 895; am. and redesign. 1993, ch. 239, § 18, p. 824.

54-216 which comprised I.C., § 54-215, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 12, p. 895; am. and redesign. 1993, ch. 239, § 19, p. 824.

54-217. State board of accountancy account. — All fees, charges and fines of every kind collected by the board under the provisions of this chapter shall be deposited in the state treasury to the credit of the Idaho state board of accountancy account. All such moneys as may hereafter come into the Idaho state board of accountancy account are hereby appropriated to carry out the purposes and objects of this chapter, and for payment of all costs and expenses incurred in connection therewith. No other state funds shall be expended for the purposes of this chapter. Moneys shall be paid out of the account upon warrants drawn by the state controller upon the presentation of proper vouchers approved by the Idaho state board of

accountancy. Such claims and vouchers will be subject to such examination by the board of examiners as are other claims against the state.

History.

I.C., § 54-216, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 13, p. 895;

am. and redesi. 1993, ch. 239, § 20, p. 824; am. 1994, ch. 180, § 95, p. 420.

STATUTORY NOTES**Cross References.**

State board of examiners, § 67-2001 et seq.
State controller, § 67-1401 et seq.

Prior Laws.

Another former § 54-217 was repealed. See Prior Laws, § 54-201.

Compiler's Notes.

This section was formerly compiled as § 54-216.

Former § 54-217 was amended and redesignated as § 54-219 by § 23 of S.L. 1993, ch. 239.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 95 of S.L. 1994, ch. 180 became effective January 2, 1995.

54-218. Acceptance of commissions and contingent fees. — (1) A licensee may accept a commission or referral fee unless prohibited by this section.

(a) A licensee shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee or the licensee's firm also performs for that client:

(i) An attest service; or

(ii) A compilation when the licensee expects, or reasonably might expect, that a third party will use the compilation and the compilation report does not disclose a lack of independence.

(b) A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose in writing that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

(c) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client in writing.

(2) A licensee may accept a contingent fee which is disclosed to the client in writing unless prohibited by this section.

(a) A licensee shall not perform for a contingent fee any professional service for, or receive such a fee from, a client for whom the licensee or the licensee's firm performs:

(i) An attest service; or

(ii) A compilation, when the licensee expects, or reasonably might expect, that a third party will use the compilation and the compilation report does not disclose a lack of independence.

(b) A licensee shall not prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(c) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this section, fees shall not be regarded as contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending, for example, on the complexity of services rendered.

(3) The prohibitions contained in this section shall apply during the period in which the licensee is engaged to perform any of the services listed herein and the period covered by any historical financial statements involved in any such listed services.

History.

I.C., § 54-218, as added by 1993, ch. 239, § 22, p. 824; am. 2002, ch. 92, § 15, p. 233.

STATUTORY NOTES

Prior Laws.

Former § 54-218, which comprised I.C., § 54-218, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 15, p. 895; am. 1986, ch. 128, § 2, p. 331, was repealed by

S.L. 1993, ch. 239, § 21, effective July 1, 1993.

Another former § 54-218 was repealed. See Prior Laws, § 54-201.

54-218A. Issuance of report. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 54-218A, as added by 1986, ch. 128, § 3, p. 331,

was repealed by S.L. 1993, ch. 239, § 21, effective July 1, 1993.

54-219. License — Restriction, revocation, suspension or denial — Causes — Cost recovery — Administrative penalties. — (1) After notice and opportunity for hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, for cause shown, the board may revoke, suspend, refuse to renew, administratively penalize, reprimand, restrict or place on probation the holder of a certificate or license, or refuse to issue any certificate or any license to an applicant, for any one (1) of the following causes:

(a) Any false statement with the intent to mislead or deceive the board or its members in connection with any application; or, cheating or any attempt to cheat in an examination.

(b) Fraud or deceit in obtaining or renewing a certificate or license to practice as a certified public accountant or licensed public accountant under the provisions of this chapter.

(c) Dishonesty, fraud or gross negligence in the performance of profes-

sional services as a licensee or individual granted privileges under section 54-227, Idaho Code, or in the filing [of] or failure to file his own income tax returns.

(d) Violation of any provision of this chapter, or any rule adopted by the board under authority granted by this chapter, or an order of the board directed specifically to the licensee.

(e) Conviction of or a guilty plea to a felony under the laws of any state or country.

(f) Conviction of or a guilty plea to any crime involving moral turpitude, an element of which is dishonesty or fraud, under the laws of any state or country.

(g) Representing oneself as a certified public accountant or licensed public accountant during any period in which the license of the person so practicing has been suspended or revoked by the board.

(h) Cancellation, revocation, suspension or refusal to renew or grant a license or privileges under section 54-227, Idaho Code, for disciplinary reasons by any other state for any cause.

(i) Practicing as a certified public accountant or licensed public accountant under a false or assumed name; provided, however, this subsection [paragraph] shall have no application to practicing as a certified public accountant or licensed public accountant under the name of a firm, when such style or name is in conformity with a type or form approved by the rules of the board.

(j) Habitual use of drugs or intoxicants to such a degree as to render the licensee unreliable and unfit to practice as a certified public accountant or licensed public accountant.

(k) Suspension or revocation of the right to practice before any agency of the United States government or of the state of Idaho, for any cause other than failure to pay a registration or similar fee.

(l) Having been declared mentally incompetent by a court of competent jurisdiction; provided, however, that when a person's license shall have been revoked or suspended for this cause, such license shall be reinstated by the board when said disability is judicially removed.

(m) Representing oneself as qualified or authorized to practice as a certified public accountant or licensed public accountant in this state without holding a current, valid, unrevoked and unsuspended certificate and license or privileges under section 54-227, Idaho Code.

(n) Performance of any fraudulent act while holding a certificate, license, permit or privileges under this chapter.

(o) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under section 54-227, Idaho Code.

(2) The expenses, including attorney's fees, incurred by the board for any or all proceedings initiated against a person for violation of any of the provisions of this chapter may be charged against such person by the board, upon the finding of a violation of this chapter, in addition to any administrative penalties which may be levied by the board against such person. Administrative penalties levied by the board shall not exceed two thousand five hundred dollars (\$2,500) per violation.

(3) In lieu of or in addition to any remedy specifically provided, the board may require of a licensee or a firm:

- (a) A peer review conducted in such fashion as the board may specify;
- (b) Preissuance review;
- (c) Satisfactory completion of such continuing professional education programs or examinations as the board may specify; and
- (d) Other similar remedies.

(4) In any action brought under the provisions of this chapter, evidence of the commission of a single act prohibited in this chapter shall be sufficient to justify a suspension, revocation, fine, administrative penalty, restriction, reprimand, injunction, restraining order, conviction or any other remedy authorized in this chapter. Evidence of a general course of conduct shall not be required.

History.

I.C., § 54-217, as added by 1974, ch. 263, § 2, p. 1686; am. 1976, ch. 267, § 14, p. 895;

am. and redesign. 1993, ch. 239, § 23, p. 824; am. 1994, ch. 49, § 7, p. 81; am. 2002, ch. 92, § 16, p. 233; am. 2003, ch. 14, § 5, p. 31.

STATUTORY NOTES

Prior Laws.

Another former § 54-219 which comprised S.L. 1963, ch. 284, § 19, p. 732, was repealed by S.L. 1972, ch. 242, § 3, p. 631.

designated as § 54-222 by § 27 of S.L. 1993, ch. 239.

The bracketed insertion in paragraph (1)(c) was added by the compiler to correct an obvious grammatical error.

Compiler's Notes.

This section was formerly compiled as § 54-217.

Former § 54-219 was amended and redesignated as § 54-222 by § 27 of S.L. 1993, ch. 239.

The bracketed insertion in paragraph (1)(i) was added by the compiler to correct an internal designation made incorrect by the 1993 amendment of this section.

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Accountants, § 4.

54-220. Use of title — Valid license to practice. — (1) No person shall assume or use the title or designation "certified public accountant" or "licensed public accountant" or any other title, designation, words, letters, abbreviations, sign, card or device tending to indicate that such person is a certified public accountant or licensed public accountant unless such person holds a license or is granted privileges as a certified public accountant or licensed public accountant pursuant to chapter 2, title 54, Idaho Code.

(2) No person or firm not licensed, granted privileges or registered pursuant to this chapter shall assume or use the title or designation "certified accountant," "chartered accountant," "public accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant," or other titles or designation likely to be confused with the titles "certified public accountant" or "licensed public accountant" or use any of the abbreviations "CA," "LA," "LPA," "CPA," "RA," "AA," or similar abbreviation likely to be confused with the abbreviations "CPA" or "LPA." The title "enrolled agent" or "EA" may only be used by individuals so designated by the internal revenue service. Notwithstanding the provisions

of this section, the board may adopt rules authorizing and limiting the use of specific titles and designations granted by recognized professional societies or associations.

(3) No person, proprietorship, partnership or corporation not licensed or registered pursuant to this chapter shall assume or use any title or designation that includes the words “accountant,” “auditor” or “accounting” in connection with any other language, including the language of a report, that implies that such person, proprietorship, partnership or corporation is so licensed or registered or has special competence as an accountant or auditor; provided however, that this subsection does not prohibit any officer, partner, member or employee of any organization from affixing his signature to any statement in reference to the financial affairs of such organization with any wording designating the position, title or office that he holds therein nor prohibit any act of a public official or employee in the performance of his duties as such.

(4) No business entity shall provide attest services or compilation reports or assume or use the title “certified public accountants” or “licensed public accountants” or the abbreviation “CPAs,” “LPAs” or any other title, designation, words, letters, abbreviations, sign, card or device tending to indicate that such business entity is a firm unless: (a) the business entity is a firm registered pursuant to this chapter, and (b) ownership of the firm is in accord with this chapter and rules promulgated by the board.

History.

I.C., § 54-220, as added by 1993, ch. 239,

§ 24, p. 824; am. 2002, ch. 92, § 17, p. 233;
am. 2003, ch. 14, § 6, p. 31.

STATUTORY NOTES

Prior Laws.

Another former § 54-220 was repealed. See
Prior Laws, § 54-201.

igned as § 54-223 by § 28 of S.L. 1993, ch.
239.

Compiler's Notes.

Former § 54-220 was amended and redes-

54-221. Issuance of a report. — (1) Only licensees shall issue a report on the financial statements of any other person, firm, organization or governmental unit or offer to render or render any attest or compilation service, as defined herein. This prohibition does not apply to any officer, partner, employee or member of any organization affixing their signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title or office that they hold therein; nor prohibit any act of a public official or employee in the performance of their duties as such; nor prohibit the performance by any person of other services involving the use of accounting skills, including the preparation of tax returns, management, financial advisory or consulting services, and the preparation of financial statements without the issuance of reports, as defined in section 54-206, Idaho Code.

(2) The prohibition contained in subsection (1) of this section is applicable to issuance, by a person or firm not holding a valid license, of a report using

any form of language conventionally used by licensees respecting a review of financial statements or respecting a compilation of financial statements.

(3) No licensee or individual granted privileges under section 54-227, Idaho Code, shall perform attest services through any form of business that is not registered under the provisions of section 54-214, Idaho Code, or an equivalent provision of the laws of another state.

(4) No licensee shall issue a compilation report through any form of business that is not registered under the provisions of section 54-214, Idaho Code, unless the report discloses the name of the business through which the individual is issuing the report, and the individual:

- (a) Signs the compilation report identifying the individual as a CPA or LPA;
- (b) Meets the competency requirements provided in this chapter and by board rule; and
- (c) Undergoes no less frequently than once every three (3) years, a peer review conducted in such manner as the board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

(5) A licensee or firm that does not issue reports may issue financial statements without reports only if the financial statements include the disclaimer language of section 54-226(3), Idaho Code.

History.

I.C., § 54-221, as added by 1993, ch. 239, § 26, p. 824; am. 2002, ch. 92, § 18, p. 233.

STATUTORY NOTES

Prior Laws.

Former § 54-221, which comprised I.C., § 54-221, as added by 1974, ch. 263, § 2, p. 1686, was repealed by S.L. 1993, ch. 239, § 25, effective July 1, 1993.

Another former § 54-221 was repealed. See Prior Laws, § 54-201.

54-222. Violation of chapter a misdemeanor. — Any violation of any of the provisions of this chapter shall constitute a misdemeanor, and any person, corporation, partnership, proprietorship, member, firm or association of any kind or nature convicted thereof may be punished by a fine not to exceed seven hundred fifty dollars (\$750), or six (6) months imprisonment, or both.

History.

I.C., § 54-219, as added by 1974, ch. 263,

§ 2, p. 1686; am. 1986, ch. 128, § 4, p. 331; am. and redesisg. 1993, ch. 239, § 27, p. 824.

STATUTORY NOTES

Prior Laws.

Another former § 54-222 was repealed. See Prior Laws, § 54-201.

Compiler's Notes.

This section was formerly compiled as § 54-219.

Former § 54-222 was amended and redesignated as § 54-224 by § 29 of S.L. 1993, ch. 239.

54-223. Injunction. — Whenever any person, corporation, partnership, proprietorship, firm or association of any kind or nature violates any of the provisions of this chapter, the board, without regard to criminal prosecution, may maintain an action in the name of the state of Idaho to enjoin said person, corporation, partnership, proprietorship, firm or association from any further violations, such action to be brought either in the county in which said acts are claimed to have been or are being committed, in the county where the defendant resides, or in Ada County. Upon the filing of a verified complaint in the district court, the court, if satisfied that the acts complained of have been or probably are being or may be committed, may issue an injunction pendente lite without bond, on request of the board, enjoining the defendant from the commission of any such act or acts constituting said violations. A copy of said complaint shall be served upon the defendant, and the proceedings shall thereafter be conducted as in any other similar civil action. If the commission of said act or acts be established, the court shall enter a decree perpetually enjoining said defendant from committing said act or acts. In case of violation of any injunction issued under the provisions of this section, the court, or the judge thereof at chambers, may summarily try and punish the offender for his contempt of court.

History.

I.C., § 54-220, as added by 1974, ch. 263,

§ 2, p. 1686; am. 1986, ch. 128, § 5, p. 331; am. and redesisg. 1993, ch. 239, § 28, p. 824.

STATUTORY NOTES

Prior Laws.

Another former § 54-223 was repealed. See Prior Laws, § 54-201.

Former § 54-223 was amended and redesignated as § 54-225 by § 30 of S.L. 1993, ch. 239.

Compiler's Notes.

This section was formerly compiled as § 54-220.

54-224. Judicial review. — Any person whose certificate or license shall be revoked or suspended or who is otherwise aggrieved by any final action of the board taken pursuant to section 54-219, Idaho Code, shall have the right to judicial review of such action in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code.

History.

I.C., § 54-222, as added by 1974, ch. 263,

§ 2, p. 1686; am. and redesisg. 1993, ch. 239, § 29, p. 824.

STATUTORY NOTES

Prior Laws.

Former § 54-224, which comprised I.C.,

§ 54-224, as added by 1974, ch. 263, § 2, p. 1686, was repealed by S.L. 1993, ch. 239,

§ 31, effective July 1, 1993.

Compiler's Notes.

This section was formerly compiled as § 54-222.

54-225. Prosecuting attorney — Attorney general. — It shall be the duty of the prosecuting attorney in each county to prosecute violations of this chapter occurring within the county. The attorney general shall act as legal adviser to the board; provided, however, the board may retain private counsel to represent the board.

History.

I.C., § 54-223, as added by 1974, ch. 263, § 2, p. 1686; am. and redesisg. 1993, ch. 239, § 30, p. 824.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

This section was formerly compiled as § 54-223.

54-226. Inapplicability of chapter. — (1) This chapter shall not be construed to prevent any person from rendering tax services, management advisory or consulting services, or from preparing financial statements without the expression of an opinion or an assurance.

(2) This chapter shall not be construed to prevent any person from stating that he has prepared, assembled or drafted a financial statement, provided he does not use any additional language which comprises an assurance.

(3) The prohibitions of section 54-221, Idaho Code, and the other provisions of this chapter shall not be construed to preclude the use of the following language by any person: "I (We) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (We) have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them."

History.

I.C., § 54-226, as added by 1993, ch. 239, § 34, p. 824; am. 2003, ch. 14, § 7, p. 31.

STATUTORY NOTES

Compiler's Notes.

The words in parentheses so appeared in the law as enacted.

54-227. Substantial equivalency. — (1) A person whose principal place of business is not in this state and who has an active certificate and

license as a certified public accountant from any state which the board has determined to be substantially equivalent to this chapter shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state without the need to obtain a license.

(2) A person whose principal place of business is not in this state and who has an active certificate and license as a certified public accountant from any state which the board has not determined to be substantially equivalent to this chapter shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state without the need to obtain a license only if such person demonstrates that his or her qualifications are substantially equivalent to the licensure requirements of this chapter. The requirement to demonstrate substantially equivalent qualifications shall be waived if the applicant has been licensed for no less than four (4) years as a certified public accountant within the previous ten (10) years.

(3) Licensees of other states exercising the privilege afforded under this section hereby consent, as a condition of the grant of this privilege:

- (a) To the personal and subject matter jurisdiction and disciplinary authority of the board;
- (b) To comply with this chapter and the board's rules; and
- (c) To the appointment of the state boards which issued their licenses as their agents upon whom process may be served in any action or proceeding by this state's board against such licensees.

(4) A licensee of this state offering or rendering services or using the CPA title in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in another state. Notwithstanding the board's enforcement authority granted by this chapter, the board shall investigate any complaint made by the board of accountancy of another state.

History.

I.C., § 54-227, as added by 2002, ch. 92, § 19, p. 233; am. 2003, ch. 14, § 8, p. 31; am. 2008, ch. 128, § 10, p. 361.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 128, in subsection (1), deleted the last two sentences, which read: "However, such persons shall notify the board of their intent to enter the state under this provision. The board may charge a fee for such notification as set forth in section 54-212, Idaho Code, and as prescribed by rules of the board"; and in subsection (2), in the last sentence, inserted "been licensed for," deleted "experience as determined by the board, provided that the experience or its equivalent was obtained after

original licensure" preceding "as a certified public accountant," substituted "within the previous ten (10) years" for "and within the ten (10) years immediately preceding the practice privilege application," and deleted the former last two sentences, which read: "Such persons shall notify the board of their intent to enter the state under this provision in the manner provided by rules of the board. The board may charge a fee for such notification as set forth in section 54-212, Idaho Code, and as prescribed by rules of the board."

54-228. Construction — Severability. — The provisions of this chap-

ter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

History.

I.C., § 54-228, as added by 2002, ch. 92, § 20, p. 233.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 2002, ch. 92, which is codified as §§ 54-201 to 54-204,

54-206 to 54-214, 54-218, 54-219 to 54-221, 54-227, and 54-228.

CHAPTER 3
ARCHITECTS

SECTION.

- 54-301. Examination required for license.
- 54-302. Qualifications for examination and license.
- 54-302A. License by endorsement — Temporary practice.
- 54-303. Regular examinations.
- 54-304. Fees — Issuance of licenses — Renewal and reinstatement.
- 54-305. Grounds for discipline — Judicial review — Penalties — Subsequent license.
- 54-306. Certified copies as evidence.
- 54-307. License is individual — Firm name.
- 54-308. Licensed architect's seal.

SECTION.

- 54-309. Definitions — Limitation on application.
- 54-310. Violations and penalties.
- 54-311. Separability.
- 54-312. Architects — Board of examiners — Powers and duties — Compensation.
- 54-313. Board of architectural examiners — Continuance of present board.
- 54-314. Filling vacancies on board.
- 54-315. Injunction procedure.
- 54-316. Foreign partnership and corporate practice.

54-301. Examination required for license. — In order to safeguard life, health, and property, and to promote the public welfare, any person practicing or offering to practice architecture, as herein defined, in the state of Idaho, shall submit evidence of his qualifications so to practice and be licensed as hereinafter provided. Except as herein otherwise expressly provided, no license shall be issued until an applicant has successfully passed an examination conducted by the board of architectural examiners.

History.

I.C., § 54-301, as added by 1961, ch. 161, § 2, p. 232.

STATUTORY NOTES

Cross References.

- Board of architectural examiners, § 54-312.
- Landscape architects, § 54-3001 et seq.
- Penalty for practicing without license, § 54-310.

Practice of architecture defined, § 54-309.

Prior Laws.

Section 1 of S.L. 1961, ch. 161 repealed former § 54-301, which comprised 1917, ch. 116, § 10, p. 397; compiled and reen. C.L. 92:10; C.S. § 2222; I.C.A., § 53-401.

JUDICIAL DECISIONS

Illegal Contract.

Architectural services rendered by an architect before he was licensed were done pur-

suant to an illegal contract. *Farrell v. Whiteman*, 146 Idaho 604, 200 P.3d 1153 (2009).

RESEARCH REFERENCES

Am. Jur. — 5 *Am. Jur.* 2d, Architects, §§ 1-4.

C.J.S. — 6 *C.J.S.*, Architects, § 6 et seq.

A.L.R. — Right of architect or engineer licensed in one state to recover compensation for services rendered in another state, or in connection with construction in another state, where he was not licensed in the latter state. 32 A.L.R.3d 1151.

Liability to one injured in course of construction, based upon architect's alleged failure to carry out supervisory responsibilities. 59 A.L.R.3d 369.

Architect's liability for personal injury or death allegedly caused by improper or defective plans or design. 97 A.L.R.3d 455.

Grant or denial of license to practice architecture. 2 A.L.R.4th 1103.

Necessity of expert testimony to show malpractice of architect. 3 A.L.R.4th 1023.

Recovery for injury or damage caused by defects in building or land under. 25 A.L.R.4th 351.

54-302. Qualifications for examination and license. — (1) A person applying for examination shall submit satisfactory evidence of the following to the board of architectural examiners:

(a) Graduation from an accredited architectural curriculum in a school or college approved by the board of architectural examiners as of satisfactory standing, and a specific record of having started or completed an additional three (3) years or more of experience in architectural work in an internship setting of a character deemed satisfactory by the board, by rule indicating that the applicant is competent to practice architecture; or

(b) That the applicant has attained standards, as the board may adopt by rule, of knowledge and skill approximating that attained through graduation from an accredited architectural curriculum, and a specific record of eight (8) years or more of experience in architectural work of a character deemed satisfactory by the board by rule, indicating that the applicant is competent to practice architecture, and a specific record of having started or completed an additional three (3) years or more of experience in architectural work in an internship setting of a character deemed satisfactory by the board.

(2) A person is qualified for all examination divisions once they have met the graduation requirement and started the internship program as defined in the board rules or met the eight (8) years of experience requirement as approved by the board and started the internship program as defined in the board rules.

(3) A person is qualified for a license once they have established a specific record of successful passage of all examination divisions and the completion of three (3) years or more of experience in architectural work in an internship setting of a character deemed satisfactory by the board.

(4) The board may adopt, by rule, as its own standards for education and experience, the guidelines published by the national council of architectural registration boards.

History.

I.C., § 54-302, as added by 1961, ch. 161, § 4, p. 232; am. 1974, ch. 13, § 26, p. 138; am.

1976, ch. 166, § 1, p. 596; am. 1983, ch. 245, § 1, p. 659; am. 2009, ch. 76, § 1, p. 213.

STATUTORY NOTES**Cross References.**

Penalty for unlicensed practice, § 54-310.

Prior Laws.

Section 3 of S.L. 1961, ch. 161 repealed former § 54-302, which comprised 1917, ch. 116, § 11, p. 397; compiled and reen. C.L. 92:11; C.S., § 2223; I.C.A., § 53-402.

Compiler's Notes.

For more on the national council of architectural registration boards, see <http://www.ncarb.org>.

Amendments.

The 2009 amendment, by ch. 76, in the introductory paragraph in subsection (1), deleted "and license" following "examination"; in subsection (1)(a), inserted "having started or completed" and "in an internship setting"; in subsection (1)(b), added "and a specific record of having started or completed an additional three (3) years or more of experience in architectural work in an internship setting of a character deemed satisfactory by the board"; and added subsections (2) and (3), redesignating former subsection (2) as subsection (4).

54-302A. License by endorsement — Temporary practice. —

1. Applicants may be licensed by endorsement, if:

- a. The applicant holds a current and valid license issued by another state, a licensing authority recognized by the board; and
- b. The applicant holds a national council of architectural registration boards certificate; and
- c. The applicant pays the fees specified in section 54-304, Idaho Code, files an application with the board, upon a form prescribed by the board, containing such information satisfactory to the board concerning the applicant as the board considers pertinent.

2. An architect, not licensed in this state, seeking an architectural commission in this state, shall be permitted to practice in the state for a period not to exceed six (6) months, for the purpose of offering to render architectural services and for that purpose only, without first having been licensed by the board, if:

- a. The applicant holds a current and valid license issued by a licensing authority recognized by the board; and
- b. The applicant holds a national council of architectural registration boards certificate; and
- c. The applicant notifies the board in writing, prior to any practice, including evidence to satisfy subsections 2a and 2b of this section, that he will be present in the state for the purpose of offering to render architectural services; and
- d. The applicant pays the fee as specified by section 54-304, Idaho Code, and set by board rule.

3. Persons allowed to offer architectural services under subsection 2 of this section are prohibited from doing more than offering such services or actually rendering architectural services until fully licensed by the board. Violation of this provision, if found by the board after a hearing under chapter 52, title 67, Idaho Code, constitutes grounds for refusal to issue a license.

History.

I.C., § 54-302A, as added by 1983, ch. 245,
§ 2, p. 659.

STATUTORY NOTES**Compiler's Notes.**

For more on the national council of archi-

tectural registration boards, see <http://www.ncarb.org>.

54-303. Regular examinations. — The bureau of occupational licenses shall facilitate examinations for a license to practice architecture, if there be any such applicants. The examinations shall be conducted by the board of architectural examiners under fair and wholly impartial methods and subject to such rules as the board may establish to test the applicant's qualifications in all branches of the professional practice of architecture with special reference to the structural stability of buildings and the protection of life, health, and property. The board may adopt, by rule, the examinations and recommended grading procedures of the national council of architectural registration boards.

History.

I.C., § 54-303, as added by 1961, ch. 161,
§ 6, p. 232; am. 1974, ch. 13, § 27, p. 138; am.

1982, ch. 300, § 1, p. 761; am. 1983, ch. 245,
§ 3, p. 659; am. 2006, ch. 127, § 1, p. 365.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Section 5 of S.L. 1961, ch. 161 repealed former § 54-303, which comprised 1917, ch. 116, § 12, p. 397; reen. C.L. 92:12; C.S., § 2224; I.C.A., § 53-403.

Amendments.

The 2006 amendment, by ch. 127, substi-

tuted "facilitate examinations for a license" for "hold each year at least one (1) examination for license" in the first sentence.

Compiler's Notes.

For more on the national council of architectural registration boards, see <http://www.ncarb.org>.

54-304. Fees — Issuance of licenses — Renewal and reinstatement. — Every person applying for examination for a license under this chapter shall pay a fee equal to that charged by the national examining entity plus a processing fee of twenty-five dollars (\$25.00) to the bureau of occupational licenses. In case the applicant fails to qualify, said fee shall be retained by the bureau to cover the necessary expenses of said examination. If the result of the examination of any applicant shall be satisfactory to the board, under its rules, it shall issue to such applicant a certificate setting forth the fact that he is a licensed architect and authorized to practice his profession in this state. The fee for reexamination shall be equal to that charged by the national examining entity plus a processing fee of twenty-five dollars (\$25.00). The fee for obtaining a license under section 54-302A 1., Idaho Code, shall be an amount not to exceed two hundred dollars (\$200). The fee for permission under section 54-302A 2., Idaho Code, shall be an amount not to exceed two hundred dollars (\$200). The annual fee for renewal of a license shall be an amount not to exceed one hundred dollars

(\$100), which shall be paid to the bureau. The board shall adopt fees by rule. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

History.

1917, ch. 116, § 13, p. 397; compiled and reen. C.L. 92:13; C.S., § 2225; am. 1927, ch. 243, § 8, p. 369; I.C.A., § 53-404; am. 1969, ch. 464, § 2, p. 1304; am. 1974, ch. 13, § 28, p.

138; 1974, ch. 181, § 1, p. 1477; am. 1976, ch. 166, § 2, p. 596; am. 1982, ch. 300, § 2, p. 761; am. 1983, ch. 245, § 4, p. 659; am. 1988, ch. 257, § 1, p. 496; am. 1994, ch. 17, § 1, p. 32; am. 2003, ch. 21, § 1, p. 77.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

tutional, such decision shall not affect the validity of the remaining portions of this act.”

Compiler’s Notes.

Section 13 of S.L. 1927, ch. 243 provides: “If any section, subdivision, sentence or clause of this act, is for any reason held to be unconsti-

Effective Dates.

Section 2 of S.L. 1974, ch. 181 provided the act should be in full force and effect on and after July 2, 1974.

54-305. Grounds for discipline — Judicial review — Penalties — Subsequent license. —

(1) The board may refuse to grant, or may temporarily suspend or otherwise restrict a license to practice architecture in this state for a period not to exceed two (2) years, or may revoke a license, upon any one (1) of the following grounds:

- (a) The employment of any fraud or deception in applying for a license or in passing the examination required under this chapter.
- (b) The employment of a fraud or deceit in the practice of his profession or procuring any contract in the practice of his profession by fraudulent means.
- (c) A display of incompetency or recklessness in the practice of architecture resulting in a detriment to life, health, or public safety.
- (d) The conviction, finding of guilt, receipt of a withheld judgment or suspended sentence in this or any other state for a felony or a misdemeanor, which misdemeanor involved a violation of the provisions of this act, a willful violation of state or local building codes, or a violation of other laws relating to public health and safety and which were committed in the course of practicing architecture.
- (e) Affixing of his signature to, or impressing his seal upon, any plans, drawings, specifications, or other instruments of service which have not been prepared by him, or under his responsible control, or has permitted his name to be used for the purpose of assisting any person, not a licensed architect, to evade the provisions of this chapter.
- (f) Receiving of rebates, commissions, grants of money or other favors in connection with the work, without the knowledge of the party for whom he is working, or having a pecuniary interest in the performance of the contract for the work designed, planned or supervised by him without the knowledge and consent of the owner.

(g) Practicing architecture contrary to the provisions and requirements of this chapter.

(h) Violation of rules of conduct for architects which the board may adopt in accordance with guidelines published by the national council of architectural registration boards.

(i) Practicing architecture without being licensed, in violation of licensing laws of the jurisdiction in which the practice took place.

(2) Before any license shall be revoked or suspended, or the issuance thereof denied under subsection 3 of section 54-302A, Idaho Code, the holder or applicant shall be entitled to at least twenty (20) days' notice in writing of the nature of the charge against him and of the time and place of the hearing before the board for the purpose of hearing and determining such charge. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any revocation or suspension of license shall be certified in writing by the said board and attested to with the official seal of said board affixed thereto; and such revocation or suspension of license shall be filed in the office of the bureau of occupational licenses.

(3) Any person aggrieved by the action of the board is entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

(4) Upon the finding of the existence of grounds for discipline of any person holding a license, seeking a license, or renewing a license under the provisions of this chapter, the board may impose one (1) or more of the following penalties:

(a) Suspension of the offender's license for a term to be determined by the board;

(b) Revocation of the offender's license;

(c) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of architecture in a particular manner for a term to be determined by the board;

(d) Refusal to renew the offender's license;

(e) Placement of the offender on probation and supervision by the board for a period to be determined by the board;

(f) Imposition of an administrative fine not to exceed two thousand dollars (\$2,000).

(5) Any person whose license has been revoked, suspended or the issuance of which has been denied by said board for cause and the order denying, revoking or suspending the same not having been revoked by a court of competent jurisdiction, may apply for a reissuance, reinstatement or issuance of a license and the board, for reasons it may deem sufficient, may reissue, reinstate or issue the license to such person, provided, however, that it shall not take such action until the expiration of one (1) year after the date of such order.

History.

I.C., § 54-305, as added by 1961, ch. 161, § 8, p. 232; am. 1974, ch. 13, § 29, p. 138; am. 1983, ch. 245, § 5, p. 659; am. 1989, ch. 339,

§ 1, p. 856; am. 1991, ch. 30, § 10, p. 58; am. 1993, ch. 216, § 50, p. 587; am. 2006, ch. 127, § 2, p. 365.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Section 7 of S.L. 1961, ch. 161 repealed former § 54-305, which comprised 1917, ch. 116, § 14, p. 397; reen. C.L. 92:14; C.S., § 2226; I.C.A., § 53-405.

Amendments.

The 2006 amendment, by ch. 127, redesignated the subsections and substituted "responsible control" for "immediate and responsible direction" in subsection (1)(e).

Compiler's Notes.

The term "this act", in paragraph (1)(d), refers to S.L. 1989, ch. 339, which is codified as §§ 54-305, 54-308, and 54-309. The reference probably should be to "this chapter," meaning chapter 3, title 54, Idaho Code.

For more on the national council of architectural registration boards, see <http://www.ncarb.org>.

Section 16 of S.L. 1991, ch. 30 read: "DISPOSITION OF RECORDS. (a) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was duplicated by filing with another state agency, the secretary of state may destroy those documents in his files.

"(b) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was not duplicated by filing with another state agency, the secretary of state may transfer those documents to the state historical library if it is determined that they have historical significance, and otherwise may destroy them.

"(c) Whenever this act has transferred the place of filing for a type of document from the secretary of state to another agency, the secretary of state and the head of the other agency may thereafter agree to transfer those documents filed before the effective date of this act to the agency which has acquired filing responsibility."

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Architects, § 13.

A.L.R. — Revocation or suspension of li-

cense to practice architecture. 58 A.L.R.3d 543.

54-306. Certified copies as evidence. — A copy of any license granted by the board or any revocation thereof, where the original license or revocation thereof is required to be filed with the secretary of state, duly certified to be a true and correct copy by the secretary of state, shall be competent evidence in any court to prove the contents thereof.

History.

1917, ch. 116, § 15, p. 397; reen. C.L. 92:15;

C.S., § 2227; I.C.A., § 53-406; am. 1974, ch. 263, § 30, p. 1686.

54-307. License is individual — Firm name. — (1) Every person practicing or offering to practice architecture as herein defined, and not otherwise excepted, shall have a separate license under his own name. A license shall not be issued in the name of any firm or corporation.

(2) The holder of a license shall not maintain, in the practice of architecture, any person who does not hold a license to practice architecture in this state, unless such unlicensed person works under the responsible control of his licensed supervisor.

(3) All architects practicing architecture as individuals, all existing firms and all firms organized and formed henceforth, or when any change in the personnel of the firm occurs, whether by withdrawal, addition, resignation or death, or upon a change in the firm name, shall make and file with the bureau of occupational licenses, a sworn statement giving the names and addresses of all its present members and the name under which the firm is practicing architecture. Nothing in this section shall prevent the surviving

members of a partnership, professional association or professional corporation, from continuing the existing firm name as long as the practice and business is continued under the existing firm name without change.

History.

I.C., § 54-307, as added by 1961, ch. 161, § 10, p. 232; am. 1974, ch. 13, § 31, p. 138;

am. 1978, ch. 125, § 1, p. 283; am. 1983, ch. 245, § 6, p. 659; am. 2006, ch. 127, § 3, p. 365.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Incorporation of professional service corporations, § 30-1301 et seq.

Penalty for practicing without license, § 54-310.

Practice of architecture defined, § 54-309.

Prior Laws.

Section 9 of S.L. 1961, ch. 161 repealed former § 54-307, which comprised 1917, ch.

116, § 16, p. 397; reen. C.L. 92:16; C.S., § 2228; I.C.A., § 53-407.

Amendments.

The 2006 amendment, by ch. 127, redesignated the subsections and substituted "responsible control of his licensed supervisor" for "immediate and personal direction and supervision of his licensed supervisor who shall regularly and customarily attend his business in the same quarters" at the end of present subsection (2).

JUDICIAL DECISIONS

Applicability.

This section applies to situations where an architect "maintained" an unlicensed employee and not when an architect merely hired a drafting service for a specific and limited project; where the drafting service

was hired only to perform work on one specific project for a limited period of time, the architect did not "maintain" any unlicensed persons. *Farrell v. Whiteman*, 146 Idaho 604, 200 P.3d 1153 (2009).

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Architects, § 8.

54-308. Licensed architect's seal. — (1) Every licensed architect shall have a seal, the impression of which must contain the name and Idaho architect license number of the architect and the words "licensed architect" and "state of Idaho," with which he shall seal all technical submissions issued from his office.

(2) The seal may be a rubber stamp or an electronically applied seal. Whenever the seal is applied to a technical submission, the original signature of the architect and the date thereof shall be written adjacent to or across the seal. Facsimile signatures shall not be utilized. The signature and seal shall appear on all technical submissions prepared by the architect or prepared under his direction and personal supervision, and the original signature and seal may be placed on original submissions or on prints or copies of original submissions, at the option of the architect. Only the title page of reports, specifications and like documents must bear the date and the seal and signature of the architect. Electronically produced documents distributed for informational uses, such as for bidding purposes or as working copies, may be issued with only the architect's seal if:

(a) The copy includes a notice that the original document is on file with the date and architect's signature;

(b) The words “original signed by” and “date original signed” are placed adjacent to or across the seal on the electronic document; and

(c) The storage location of the original document is identified.

The design and use of the seal shall be as required by board rule.

(3) Technical submissions involving the practice of architecture which are submitted to any public or governmental agency for the purpose of obtaining a building permit which are not clearly identified by the affixed seal of the architect and the original signature of the architect and date thereof shall be deemed unacceptable submissions for the purpose of obtaining such building permit.

(4) An architect may sign and seal technical submissions only if the technical submissions were:

(a) Prepared by the architect;

(b) Prepared by persons under the architect’s responsible control;

(c) Prepared by another architect licensed in Idaho if the signing and sealing architect has reviewed the other architect’s work and either has coordinated the preparation of the work or has integrated the work into his or her own technical submissions; or

(d) Prepared by another architect licensed in any state and holding the certification issued by the national council of architectural registration boards if:

(i) The signing and sealing architect has reviewed the other architect’s work and has integrated the work into his or her own technical submissions; and

(ii) The other architect’s technical submissions are prototypical building documents.

(5) An architect may sign and seal drawings, specifications or other work that is not required to be prepared by an architect if the architect has reviewed such work and has integrated it into his or her own technical submissions.

(6) Any licensed architect signing or sealing technical submissions not prepared by that architect but prepared under the architect’s responsible control by persons not regularly employed in the office where the architect is resident shall maintain and make available to the board upon request, for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect’s control over and detailed knowledge of such technical submissions throughout their preparation. Any licensed architect signing or sealing technical submissions integrating the work of another architect into the registered architect’s own work as permitted under subsection (4)(c) or (d) of this section shall maintain and make available to the board upon request for at least five (5) years following such signing and sealing adequate and complete records demonstrating the nature and extent of the registered architect’s review of and integration of the work of such other architect’s work into his or her own technical submissions and that such review and integration met the required professional standard of care.

History.

1917, ch. 116, § 17, p. 397; reen. C.L. 92:17;
C.S., § 2229; I.C.A., § 53-408; am. 1989, ch.

339, § 2, p. 856; am. 2001, ch. 88, § 1, p. 225;
am. 2006, ch. 127, § 4, p. 365.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 127, added subsections (4) to (6).

54-309. Definitions — Limitation on application. — (1) Within the meaning and intent of this chapter, the following words shall be defined as follows:

(a) “Architect” means a person who engages in the practice of architecture as herein defined, and is licensed under the provisions of this chapter.

(b) “Building” is an enclosure including improvements related thereto, which has as its principal purpose the adaptation of space for occupancy, or habitation by human beings.

(c) “Practice of architecture” consists of rendering or offering those services hereinafter described, in connection with the design, construction, enlargement, or alteration of a building or a group of buildings. The services covered within this definition include architectural planning, advice and consultation; providing preliminary studies; architectural designs, drawings and specifications; technical submissions; and, administration of construction contracts.

(d) “Prototypical building” means any commercial building or space within a commercial building that is intended to be constructed in multiple locations and that in fact has been constructed in multiple locations, and which conveys an owner’s intended uniform business program, plan or image.

(e) “Prototypical building documents” means technical submissions for prototypical buildings that:

(i) Are prepared by or under the responsible control of an architect then licensed in any jurisdiction and holding the certification issued by the national council of architectural registration boards;

(ii) Identify such architect together with the architect’s license number, jurisdiction or license and national council of registration boards certification number; and

(iii) Are marked “Prototypical Design Documents Not For Construction.” Prototypical building documents do not comprise a final, comprehensive set of design and construction documents because a prototypical building also requires adaptations for local conditions including site conditions and may require additional design as well.

(f) “Responsible control” means that amount of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the re-

viewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation.

(g) "Technical submissions" involving the practice of architecture, consist of designs, drawings, specifications, studies and other technical reports prepared in the course of practicing architecture.

(2) Nothing contained in this chapter shall be held or construed to have any application to, or to prevent or affect the following:

(a) The practice of engineering or any other profession or trade for which a license is required under any law of this state, or the practice of consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government.

(b) Draftsmen, students, clerks of work, project representatives, and others working under the supervision of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their supervisors, or to prevent the employment of clerks of work or inspectors of buildings paid by the owners from acting, if under the control or direction of a licensed architect who has prepared the drawings and specifications for the building.

(c) The rendering of any architectural service required in the erection, enlargement, alteration, or repair of any building, where such building is to be, or is used as a single or multiple family residence not exceeding three (3) units or three (3) stories in height, or as a farm building; or for the purpose of outbuildings or auxiliary buildings in connection with such residential or farm premises.

(d) The rendering of any architectural service required in the erection, enlargement, alteration, or repair of any building which does not involve the public health or safety.

(e) The preparation of shop drawings by persons other than architects for use in connection with the execution of their work; or the preparation of drawings of fixtures, or other appliances or equipment, or for any work necessary to provide for their installation.

(f) Expert consultation rendered to an architect by a consultant, whether licensed or not, employed by the architect to consult, advise, and assist as long as the architect approves, adopts and is responsible for the results of such consultation, advice and assistance.

(g) An intern working under the supervision of a licensed architect, including the use of the title "architectural intern," as may be established and limited by board rule.

(h) The use of the title "architect" by a person previously licensed as an architect in good standing whose license has lapsed based upon retirement, to identify the person's profession but not for the purpose of practicing architecture.

(i) The use of the title "architect" in this state by a person licensed as an architect and in good standing in another jurisdiction, to identify the person's profession in circumstances that would not lead a reasonable person to believe that the person using the title "architect" is offering to perform any of the services within the practice of architecture in this state.

History.

I.C., § 54-309, as added by 1961, ch. 161, § 12, p. 232; am. 1983, ch. 245, § 7, p. 659; am. 1989, ch. 339, § 3, p. 856; am. 2001, ch.

88, § 2, p. 225; am. 2005, ch. 266, § 1, p. 827; am. 2006, ch. 127, § 5, p. 365; am. 2010, ch. 163, § 1, p. 336.

STATUTORY NOTES**Prior Laws.**

Section 11 of S.L. 1961, ch. 161 repealed former § 54-309, which comprised 1917, ch. 116, § 19, p. 397; compiled and reen. C.L. 92:19; C.S., § 2231; 1929, ch. 114, § 1, p. 183; I.C.A., § 53-409.

(i) and redesignated former subsection (1)(d) as present subsection (1)(g).

The 2010 amendment, by ch. 163, substituted "three (3) stories in height" for "two (2) stories in height" in paragraph (2)(c).

Amendments.

The 2006 amendment, by ch. 127, added present subsections (1)(d) to (f) and (2)(h) and

Compiler's Notes.

For more on the national council of architectural registration boards, see <http://www.ncarb.org>.

JUDICIAL DECISIONS**Illegal Contract.**

Architectural services rendered by an architect before he was licensed were done pur-

suant to an illegal contract. *Farrell v. Whiteman*, 146 Idaho 604, 200 P.3d 1153 (2009).

DECISIONS UNDER PRIOR LAW**ANALYSIS**

Place of performance.

Who may draw building plans.

Place of Performance.

A licensed professional engineer of the state of Washington, who entered into a contract for drawing of plans for a building to be erected by defendants, residents of Idaho, but who drew all of the plans and specifications in his office in Washington, was not barred from recovering on contract, since the services were all performed in Washington. *Johnson v. Delane*, 77 Idaho 172, 290 P.2d 213 (1955).

Who May Draw Building Plans.

Services for drawing of plans for a building may be performed by either a professional architect or professional engineer where services can be rendered by either, since services of the two professions overlap each other. *Johnson v. Delane*, 77 Idaho 172, 290 P.2d 213 (1955).

54-310. Violations and penalties. — Any person, not otherwise exempted, who shall practice or offer to practice, or who shall aid and abet the unlicensed practice of, architecture in this state, or who shall advertise as an architect or put forth any card, sign or other device which would lead the public to believe that he is qualified to practice architecture, or through the use of the word architect, architecture or architectural or some other title implies that he is an architect, without first securing an architect's license, as provided by this chapter, or who shall violate any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or suffer imprisonment for a period not exceeding three (3) months, or both.

The provisions of this section do not apply to the use of the term "landscape architect" by persons licensed pursuant to chapter 30, title 54, Idaho Code.

History.
I.C., § 54-310, as added by 1961, ch. 161,
§ 14, p. 232; am. 1980, ch. 129, § 1, p. 287;

am. 1983, ch. 245, § 8, p. 659; am. 2006, ch.
127, § 6, p. 365.

STATUTORY NOTES

Prior Laws.
Section 13 of S.L. 1961, ch. 161 repealed
former § 54-310, which comprised 1917, ch.
116, § 21, p. 397; compiled and reen. C.L.
92:21; C.S., § 2233; I.C.A., § 53-410.

Amendments.
The 2006 amendment, by ch. 127, inserted
“or who shall aid and abet the unlicensed
practice of” near the beginning of the first
paragraph.

RESEARCH REFERENCES

Am. Jur. — 5 Am. Jur. 2d, Architects, § 21
et seq.

C.J.S. — 6 C.J.S., Architects, § 10.

54-311. Separability. — If any of the provisions of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter, which can be given effect without the invalid reasons, provisions, or applications, and to this end the provisions of this chapter are declared to be severable.

History.
I.C., § 54-311, as added by 1961, ch. 161,
§ 15, p. 232.

54-312. Architects — Board of examiners — Powers and duties — Compensation. — (1) The board of architectural examiners is hereby created in the department of self-governing agencies. The board of architectural examiners shall consist of six (6) members, to be appointed by the governor, each of whom shall be an architect, and shall have been a resident of and a lawfully practicing architect within the state of Idaho for a period of at least five (5) years next before his appointment. At all times the board shall have at least one (1) member who is engaged primarily in professional architectural education.

(2) The board shall have, in addition to the powers conferred elsewhere in this chapter, the following powers and duties:

- (a) To authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest.
- (b) To adopt, pursuant to the administrative procedure act, such rules as the board, in its discretion, deems necessary for the administration and enforcement of this chapter.
- (c) To conduct investigations into violations of this chapter.
- (d) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records, and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in the

district courts in criminal cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of any district court in this state on application by the board to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

(e) To adopt rules requiring annual continuing education as a condition for the renewal of licenses issued under this chapter.

(3) Each member of the board of architectural examiners shall be compensated as provided by section 59-509(i), Idaho Code.

History.

I.C., § 54-312, as added by 1971, ch. 140, § 2, p. 592; am. 1974, ch. 13, § 32, p. 138; am. 1976, ch. 166, § 3, p. 596; am. 1980, ch. 247,

§ 50, p. 582; am. 1983, ch. 245, § 9, p. 659; am. 1996, ch. 66, § 2, p. 198; am. 2001, ch. 173, § 1, p. 593; am. 2003, ch. 100, § 1, p. 318; am. 2005, ch. 234, § 1, p. 714.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies, § 67-2601 et seq.

Compiler's Notes.

The administrative procedure act, referred to in subsection (2)(b) of this section, is compiled as § 67-5201 et seq.

54-313. Board of architectural examiners — Continuance of present board. — The members of the board of architectural examiners in office at the date this act becomes effective shall continue in office until the expiration of their respective terms, subject to the provisions of this act.

The regular term of office of a member shall begin as of the first Monday immediately following the date of his appointment, and, for terms commencing after February 1, 1971, shall continue for five (5) years thereafter and until his successor shall have been appointed and accepted such appointment. A member appointed to fill a vacancy occasioned otherwise than by expiration of a term shall serve the unexpired term of his predecessor. No members shall be appointed for a period exceeding two (2) consecutive terms. Any member who has served two (2) consecutive terms may be reappointed after a lapse of five (5) years from the termination date of his last term.

A vacancy in membership shall occur and be declared by the chief of the bureau of occupational licenses whenever the regular term of a member expires or whenever a member dies, resigns, or is mentally or physically incapable of acting, or neglects or refuses to act, or otherwise ceases to have the qualifications of a member.

History.

I.C., § 54-313, as added by 1971, ch. 140, § 3, p. 592; am. 1974, ch. 13, § 33, p. 138.

STATUTORY NOTES

Cross References.

Chief of bureau of occupational licenses, § 67-2603.

Compiler's Notes.

The phrase "the date this act becomes effec-

tive," in the first paragraph, refers to July 1, 1971, the effective date of S.L. 1971, ch. 140.

The term "this act," at the end of the first paragraph, refers to S.L. 1971, ch. 140, which is codified as §§ 54-312 to 54-314.

54-314. Filling vacancies on board. — Prior to the expiration of the regular term of a member of or upon the occurrence or declaration of a vacancy in membership upon the board of architectural examiners, the chief of the bureau of occupational licenses shall in writing notify the officers of the professional society thereof, and request said society, within sixty (60) days thereafter, to recommend three (3) architects with the qualifications for membership for each appointment to be made to said board or for each vacancy. Said recommended architects shall be selected by the officers or members of said society in such manner as shall be determined by the society and shall be certified by the secretary of the society to the governor within such sixty (60) days. The governor shall appoint one (1) of the recommended architects to fill the membership of or vacancy on the board of architectural examiners; provided, however, that if no recommendation be made within the time aforesaid, the governor may appoint any architect qualified for membership. The governor shall notify the appointee of his appointment and the appointee shall qualify by filing his acceptance with the governor.

History.

I.C., § 54-314, as added by 1971, ch. 140, § 4, p. 592; am. 1974, ch. 13, § 34, p. 138.

STATUTORY NOTES

Cross References.

Chief of bureau of occupational licenses, § 67-2603.

Compiler's Notes.

For more on the American institute of architects — Idaho, see <http://www.aiaidaho.com>.

Effective Dates.

Section 5 of S.L. 1971, ch. 140 provided this act should be in full force and effect from and after July 1, 1971.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

54-315. Injunction procedure. — The board or any resident citizen may maintain an action in equity in the name of the state of Idaho to enjoin perpetually any person, firm, company, corporation or partnership from persisting in the doing of any acts constituting a violation of this chapter. Such action shall be brought in the district court of the county in which said act or acts or some of them are claimed to have been or are being committed, by filing a complaint setting forth said acts. The court, or a judge thereof at chambers, if satisfied from such complaint or by affidavits that the acts complained of have been or are being committed and will probably be persisted in, may issue a temporary writ enjoining the defendant from the commission of any such act or acts pending final disposition of the cause. The cause shall proceed as in other cases for injunction. If at the trial the

commission of said act or acts by the defendant be established, and the court further finds that it is probable that defendant will continue therein or in similar violations, the court, or a judge thereof at chambers, shall enter a decree perpetually enjoining said defendant from thereafter committing said or similar acts.

History.

I.C., § 54-315, as added by 1982, ch. 300,
§ 3, p. 761.

54-316. Foreign partnership and corporate practice. — 1. A foreign partnership or a foreign corporation may be allowed to practice architecture through an individual in this state if prior to any such practice it establishes to the board that:

- a. All the partners of a partnership or all the shareholders of a professional corporation are licensed under the laws of any state either to practice architecture or to provide allied professional services as defined in section 30-1303, Idaho Code; and
- b. One-third (1/3) of the partners of a partnership or one-third (1/3) of the shareholders of a professional corporation are licensed under the laws of any state to practice architecture; and
- c. The individual having the practice of architecture in his charge and through whom the corporation or partnership is practicing in this state is himself a partner or a shareholder, his ownership interest is equal to or greater than one (1) divided by the number of partners in the case of partnerships, or one (1) divided by the number of shareholders in the case of a corporation, and he is licensed to practice architecture in this state.

2. The provisions of this section shall not apply to foreign partnerships or foreign corporations authorized under chapter 13, title 30, Idaho Code, or other provisions of law, to do business in this state prior to the effective date of this act.

History.

I.C., § 54-316, as added by 1983, ch. 245,
§ 10, p. 659.

STATUTORY NOTES

Compiler's Notes.

The phrase "effective date of this act," at the

end of subsection 2, refers to the effective date of S.L. 1983, ch. 245, which was July 1, 1983.

CHAPTER 4

STATE ATHLETIC COMMISSION

SECTION.

- 54-401. State athletic commission.
54-402. Definitions.
54-403. Agents, employees and inspectors.
54-404. Records — Oaths — Compulsory process.
54-405. Sanctioning permit for amateur and

SECTION.

- professional contests and exhibitions — Telecasts.
54-406. Duties of commission — Sanctioning permits — Licensing — Exemptions — Medical certification.

SECTION.

- 54-407. Time between boxing contests.
- 54-408. Promoters — Bond or other security — Medical insurance.
- 54-409. Considerations before issuance of license or sanctioning permit.
- 54-410. Issuance of a license or sanctioning permit.
- 54-410A, 54-410B. [Repealed.]
- 54-411. Statement and report of event — Tax on gross receipts.
- 54-412. Funds.
- 54-413. Simultaneous or closed-circuit telecasts — Report — Tax on gross receipts.
- 54-413A. Amateur rules. [Repealed.]
- 54-414. Boxing rounds and bouts limited.
- 54-415. Physician's attendance — Examination of combatants.

SECTION.

- 54-416. Annual licenses — Fees — Revocation.
- 54-417. Participation in purse — Conducting sham contests or exhibitions — Forfeiture of license.
- 54-418. Violation of rules — Sham contests or exhibitions — Penalties.
- 54-419. Inaccurate statement and report of event — Additional tax — Notice — Penalty for delinquency.
- 54-420. Prohibitions — Penalties — Injunctions.
- 54-421. Emergency medical equipment and personnel.
- 54-422. Security — Promoter's responsibility.

54-401. State athletic commission. — There is hereby created and established the state athletic commission in the department of self-governing agencies. The state athletic commission shall be administered by the state athletic commissioner who shall be appointed by the governor subject to confirmation by the senate and shall be subject to removal at the pleasure of the governor. The state athletic commissioner shall be appointed for a term of four (4) years and shall receive an honorarium not to exceed that provided in section 59-509(p), Idaho Code.

History.

I.C., § 54-401, as added by 1992, ch. 229,

§ 2, p. 679; am. 2004, ch. 385, § 2, p. 1147; am. 2007, ch. 149, § 1, p. 444.

STATUTORY NOTES**Cross References.** *

Department of self-governing agencies, § 67-2601 et seq.

Prior Laws.

The following former sections were repealed by S.L. 1992, ch. 229, § 1, effective July 1, 1992:

54-401. (I.C., § 54-401, as added by 1972, ch. 179, § 2, p. 446; am. 1974, ch. 13, § 35, p. 138).

54-402. (1919, ch. 127, § 2, p. 412; C.S., § 1822; I.C.A., § 53-502; am. 1972, ch. 179, § 3, p. 446).

54-403. (1919, ch. 127, § 3, p. 412; C.S., § 1823; am. 1931, ch. 158, § 1, p. 266; I.C.A., § 53-503; am. 1972, ch. 179, § 4, p. 446; am. 1974, ch. 13, § 36, p. 138).

54-404. (1919, ch. 127, § 4, p. 412; C.S., § 1824; I.C.A., § 53-504; am. 1972, ch. 179, § 5, p. 446).

54-405. (1919, ch. 127, § 5, p. 412; C.S., § 1825; I.C.A., § 53-505; am. 1972, ch. 179, § 6, p. 446).

54-406. (1919, ch. 127, § 6, p. 412; C.S., § 1826; am. 1931, ch. 158, § 2, p. 266; I.C.A., § 53-506; am. 1972, ch. 179, § 7, p. 446).

54-407. (1919, ch. 127, § 16, p. 412; C.S., § 1827; I.C.A., § 53-507; am. 1965, ch. 128, § 1, p. 255; am. 1972, ch. 179, § 8, p. 446; am. 1980, ch. 247, § 51, p. 582).

54-408. (1919, ch. 127, p. 412; C.S., § 1828; I.C.A., § 53-508; am. 1972, ch. 179, § 9, p. 446).

54-409. (1919, ch. 127, § 8, p. 412; C.S., § 1829; am. 1931, ch. 158, § 3, p. 266; I.C.A., § 53-509; am. 1933, ch. 147, § 1, p. 226; am. 1972, ch. 179, § 10, p. 446).

54-410. (1919, ch. 127, § 9, p. 412; C.S., § 1820; I.C.A., § 53-510; am. 1955, ch. 167, § 1, p. 338; am. 1972, ch. 179, § 11, p. 446).

54-411. (1919, ch. 129, § 10, p. 412; C.S., § 1831; am. 1931, ch. 158, § 4, p. 266; I.C.A., § 53-511; am. 1972, ch. 179, § 14, p. 446).

54-412. (C.S., § 1832-A, as added by 1931, ch. 158, § 5, p. 266; I.C.A., § 53-512; am. 1972, ch. 179, § 15, p. 446).

54-413. (1919, ch. 127, part of § 12, p. 412; C.S., § 1833; am. 1931, ch. 158, § 6, p. 266; I.C.A., § 53-513; am. 1957, ch. 48, § 1, p. 83; am. 1972, ch. 179, § 16, p. 446).

54-414. (1919, ch. 127, § 12j, p. 412; C.S., § 1834; I.C.A., § 53-514; am. 1972, ch. 179, § 18, p. 446).

54-415. (1919, ch. 127, § 13, p. 412; C.S., § 1835; I.C.A., § 53-515; am. 1972, ch. 179, § 19, p. 446).

54-416. (1919, ch. 127, § 14, p. 412; C.S., § 1836; I.C.A., § 53-516; am. 1972, ch. 179, § 20, p. 446).

54-417. (1919, ch. 127, § 15, p. 412; C.S., § 1827; am. 1931, ch. 158, § 7, p. 266; I.C.A., § 53-517; am. 1972, ch. 179, § 21, p. 446).

54-418. (1919, ch. 127, § 17, p. 412; C.S., § 1838; I.C.A., § 53-518).

54-419. (1919, ch. 127, § 18, p. 412; C.S., § 1839; am. 1931, ch. 158, § 8, p. 266; I.C.A., § 53-519; am. 1972, ch. 179, § 22, p. 446).

54-420. (C.S., § 1839-A, as added by 1921, ch. 229, § 1, p. 517; I.C.A., § 53-520; am. 1972, ch. 179, § 23, p. 446).

54-421. (C.S., § 1839-B, as added by 1923, ch. 180, § 1, p. 280; I.C.A., § 53-521; am. 1972, ch. 179, § 24, p. 446).

54-422. (I.C., § 54-422, as added by 1991, ch. 6, § 1, p. 187).

Another former § 54-401, which comprised S.L. 1919, ch. 127, § 1, p. 412; C.S., § 1821; I.C.A., § 53-501; 1967, ch. 153, § 1, p. 343, was repealed by S.L. 1972, ch. 179, § 1, p. 446.

Amendments.

The 2007 amendment, by ch. 149, in the last sentence, substituted "receive an honorarium" for "receive compensation," and updated the section reference.

54-402. Definitions. — (1) The terms used in this chapter have the following meanings:

- (a) "Amateur combatant" means an individual who has never been a professional combatant, as defined in this chapter, as well as an individual who has never received nor competed for any purse or other article of value, either for participating in or being associated in any way with any contest or exhibition of unarmed combat or for the expenses of training therefor, other than a noncash prize which does not exceed fifty dollars (\$50.00) in value.
- (b) "Applicant" means any individual, club, association, corporation, partnership, trust or other business entity which submits an application to the commission for a license or permit pursuant to this chapter.
- (c) "Booking agent" means persons who act as bookers, agents, agencies and representatives who secure engagements and contracts for combatants.
- (d) "Boxing" means the pugilistic act of attack and defense with the fists, practiced as a sport. The term includes all variations of the sport permitting or using other parts of the human body to deliver blows upon an opponent including, but not limited to, the foot, knee, leg, elbow or head. "Boxing" includes, but is not limited to, kickboxing and martial arts but does not include professional wrestling.
- (e) "Broadcast" means any audio or visual transmission sent by any means of signal within, into or from this state, whether live or taped or time delayed, and includes any replays thereof.
- (f) "Bureau" means the Idaho bureau of occupational licenses.
- (g) "Closed-circuit telecast" means any telecast of contests or exhibitions which is not intended to be available for viewing without the payment of a fee, collected or based upon each telecast viewed, or for the privilege of viewing the telecast.
- (h) "Club" means an incorporated or unincorporated association or body of individuals voluntarily united and acting together for some common or special purpose.
- (i) "College" and "university" mean:
 - (i) An educational institution of higher learning that typically grants associate's, bachelor's, master's or doctorate degrees;

- (ii) A division or school of a university; and
- (iii) As used in this chapter, also includes educational institutions known as community colleges and professional-technical schools.
- (j) "Combatant" means an individual who takes part as a competitor in a contest or exhibition.
- (k) "Commission" means the state athletic commission.
- (l) "Commissioner" means the state athletic commissioner.
- (m) "Contest" means a boxing match in which the participants strive earnestly in good faith to win.
- (n) "Corner person" means, but shall not be limited to, a trainer, a second or any other individual who attends the combatant during a match.
- (o) "Exhibition" means an engagement in which the participants show or display their skill without necessarily striving to win, such as a wrestling match between professional wrestlers or a boxing match where boxers are sparring.
- (p) "Judge" means an individual other than a referee who shall have a vote in determining the winner of any contest.
- (q) "Kickboxing" means any form of competitive pugilistic contest or exhibition in which blows are delivered with the hand and any part of the foot.
- (r) "License" means a certificate issued to a person by the commission that is required for the person to conduct, participate in or otherwise be associated with sanctioned contests or exhibitions.
- (s) "Licensee" means a person who has been issued a license by the commission.
- (t) "Manager" means a person who controls or administers the affairs of any professional combatant. The term "manager" includes a person acting as a booking agent or a person acting as the representative of a manager.
- (u) "Martial arts" means any form of karate, kung fu, tae kwon do, sumo, judo or any other system or form of combat or self-defense art.
- (v) "Matchmaker" means a person who brings together or induces combatants to participate in contests or exhibitions or a person who arranges contests or exhibitions.
- (w) "Participant" means any person who is required by this chapter to be licensed by the commission in connection with taking part in or being associated with a contest or exhibition.
- (x) "Person" means any individual, partnership, limited liability company, club, association, corporation, organization, secondary school, college, university, trust or other legal entity.
- (y) "Physician" means an individual licensed under the laws of this state to engage in the general practice of medicine or osteopathic medicine.
- (z) "Professional combatant" means an individual eighteen (18) years of age or older who participates as a competitor in a contest or exhibition for money, prizes or purses, or who teaches, instructs or assists in the practice of unarmed combat or sparring as a means of obtaining pecuniary gain.
- (aa) "Professional contest and professional exhibition" means any contest or exhibition conducted within this state involving professional combatants.

(bb) "Professional wrestling" means an activity in which combatants struggle hand-to-hand primarily for the purpose of providing entertainment to spectators and which does not comprise a bona fide athletic contest or competition.

(cc) "Promoter" means any person including an owner, officer, partner, member, director, employee or shareholder thereof, who produces, arranges, stages or otherwise promotes any contest or exhibition.

(dd) "Pugilistic" means an act related to the skill or practice of fighting with the fists.

(ee) "Purse" means the financial guarantee or any other remuneration or thing of value for which a person participates in a contest or exhibition.

(ff) "Ring official" means any individual who performs an official function during the progress of a regulated contest or exhibition including, but not limited to, timekeepers, judges, referees and attending physicians.

(gg) "Sanctioning permit" means a license issued by the commission or a permit issued by an approved amateur athletic sanctioning organization, that authorizes a promoter to promote a single program of contests and exhibitions at a specific venue.

(hh) "Secondary school" means a school which, for operational purposes, is organized and administered on the basis of grades seven (7) through twelve (12), inclusive, or any combination thereof.

(ii) "Sparring" means to engage in a form of unarmed combat, such as occurs in a practice or exhibition match.

(jj) "Trainer" means an individual who assists, coaches or instructs any unarmed combatant with respect to physical conditioning, strategy, techniques or preparation for competition in contests or exhibitions.

(kk) "Unarmed combat" means a fight or contest between individuals or groups without the use of weapons other than the natural appurtenances of the human body.

(2) To the extent the commission deems pertinent, any specialized term not otherwise defined in this chapter may be defined by rule.

History.

I.C., § 54-402, as added by 1992, ch. 229, § 2, p. 679; am. 2004, ch. 385, § 3, p. 1147;

am. 2007, ch. 149, § 2, p. 444; am. 2009, ch. 93, § 1, p. 270; am. 2010, ch. 311, § 1, p. 831.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-402 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, in subsection (1)(a), inserted "kickboxer, martial artist" and "of unarmed combat"; added subsection (1)(f) and made related redesignations; in subsections (1)(q) and (1)(v), twice deleted "professional" following and preceding "contest or"; in subsection (1)(v), deleted "professional boxing or wrest-

ing" following "induces," and inserted "regulated by the commission" three times; in subsection (1)(w), substituted "contest or exhibition regulated by the commission" for "boxing contest, boxing exhibition or wrestling exhibition"; corrected the section reference in subsection (1)(dd); in subsection (1)(gg), deleted "a regulated boxing or wrestling" preceding "exhibition"; in subsection (1)(hh), substituted "contests and exhibitions, kickboxing contests and exhibitions, martial arts contests and exhibitions" for "boxing contests, boxing exhibitions," and inserted "contests and" at the end; in subsection (1)(kk), substituted "unarmed combatant" for "boxer

or wrestler” and “contests or exhibitions” for “boxing contests, boxing exhibitions or professional wrestling exhibitions,” and updated the section reference; and added subsection (1)(ll).

The 2009 amendment, by ch. 93, rewrote the section to the extent that a detailed comparison is impracticable, adding the definition of “combatant” and deleting that of “contestant.”

The 2010 amendment, by ch. 311, inserted “or being associated in any way with” near the middle of paragraph (1)(a); deleted “junior colleges” following “known as” in paragraph (1)(i)(iii); inserted “boxing” in paragraph

(1)(m); substituted “boxing match” for “contest” and “boxers” for “contestants” in paragraph (1)(o); rewrote paragraph (1)(r); deleted “regulated by the commission” following “combatants” and “exhibitions” (twice) in paragraph (1)(r); deleted “regulated by the commission” following “exhibition” in paragraph (1)(w); inserted “or otherwise promotes” and deleted “that is not exempt from regulation pursuant to section 54-406(3), Idaho Code” from the end of paragraph (1)(cc); rewrote paragraph (1)(gg); and deleted “which are not exempt from regulation pursuant to section 56-406(3), Idaho Code” from the end of paragraph (1)(jj).

54-403. Agents, employees and inspectors. — (1) The commission shall contract with the bureau of occupational licenses to act as the board’s agent and employ such employees and inspectors as may be necessary to provide the required administrative, investigative, legal and fiscal services and otherwise administer the provisions of this chapter.

(2) The commissioner may appoint up to five (5) deputy state athletic commissioners who shall be assigned such duties and given such authority as designated by the commissioner. Deputy commissioners shall serve at the discretion of the commissioner and may be appointed for a term not to exceed the tenure of the commissioner. Deputy commissioners shall be entitled to an honorarium as provided in section 59-509(n), Idaho Code.

(3) No less than one (1) commissioner or deputy commissioner or agent of the commission shall be present at any contest or exhibition held under the provisions of this chapter. Such agents shall carry official identification evidencing their authority. It shall be their duty to see that all rules of the commission and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any contest or exhibition, and such agent is authorized to receive from the licensee conducting the contest or exhibition the statement of gross receipts herein provided for and to immediately transmit such reports to the commission.

History.

I.C., § 54-403, as added by 1992, ch. 229,

§ 2, p. 679; am. 2004, ch. 385, § 4, p. 1147; am. 2007, ch. 149, § 3, p. 444.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Gross receipts report, § 54-411.

Prior Laws.

Former § 54-403 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, substituted “Agents” for “Officers” in the section catchline; rewrote subsection (1), which formerly read: “The commission may employ and fix the compensation of such officers, employees and inspectors as may be necessary to

administer the provisions of this chapter”; in the last sentence in subsection (2), substituted “an honorarium” for “compensation,” and corrected the section reference; and in subsection (3), rewrote the first sentence, which formerly read: “The commission may appoint official inspectors at least one (1) of whom, in the absence of the commissioner or a deputy commissioner, shall be present at any boxing contest or boxing exhibition held under the provisions of this chapter and may be present at any wrestling exhibition,” in the second sentence, substituted “agents” for “inspectors” and “official identification” for “a

card signed by the state athletic commissioner," substituted "agent" for "inspector" in the last sentence, and deleted the former last sentence, which read: "Each inspector shall receive a fee from the licensee to be set by the

commission for each contest or exhibition officially attended and, in addition, each inspector shall be compensated by the commission in accordance with section 59-509(b), Idaho Code."

54-404. Records — Oaths — Compulsory process. — The commission or its agent shall keep full and correct minutes of its transactions and proceedings, which shall at all times be open to public inspection. Any agent of the commission shall have the power to administer oaths in all matters pertaining to or concerning the proceedings of the official duties of the commission. The commission shall have power to summon witnesses to appear and testify on any matter deemed material to the proper discharge of its duties. Such summons shall be served in like manner as a subpoena issued out of the district court and shall be served by the sheriff of the proper county, and such service returned by him to the commission without compensation.

History.

I.C., § 54-404, as added by 1992, ch. 229, § 2, p. 679; am. 2007, ch. 149, § 4, p. 444.

STATUTORY NOTES

Prior Laws.

Former § 54-404 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, deleted "seal" following "Records" in the section catchline; in the first sentence, inserted "or its agent"; deleted the former second and third sentences, which read: "The commission shall

adopt and procure a seal and all processes or certificates issued by it shall be attested under such seal. Copies of the record of the commission shall be certified by the secretary and attested with the seal of the commission"; and in the second sentence, substituted "agent of the commission" for "employee of the commission officially designated by the commissioner."

54-405. Sanctioning permit for amateur and professional contests and exhibitions — Telecasts. — The commission shall have power to issue and for cause to immediately revoke any sanctioning permit to conduct amateur and professional contests and exhibitions, including a simultaneous telecast of any live, current or spontaneous contests and exhibitions on a closed-circuit telecast within this state, whether originating in this state or elsewhere, and for which a charge is made, as herein provided under such terms and conditions and at such times and places as the commission may determine. Such permit shall entitle the holder thereof to conduct contests and exhibitions under such terms and conditions and at such times and places as the commission may determine. In case the commission shall refuse to grant a permit to any applicant, or shall cancel any permit, such applicant, or the holder of such canceled permit shall be entitled, upon application, to a hearing to be held not less than sixty (60) days after the filing of such order at such place as the commission may designate; provided however, that [if] it has been found by a valid finding and such finding is fully set forth in the order, that the applicant or

permittee has been guilty of any felony or of disobeying any provision of this chapter, such hearing shall be denied.

History.

I.C., § 54-405, as added by 1992, ch. 229, § 2, p. 679; am. 2004, ch. 385, § 5, p. 1147;

am. 2007, ch. 149, § 5, p. 444; am. 2009, ch. 93, § 2, p. 270.

STATUTORY NOTES

Prior Laws.

Former § 54-405 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, inserted “kickboxing, martial arts” in the section catchline; in the first sentence, substituted “boxing contest and exhibitions, kickboxing contests and exhibitions, martial arts contests and exhibitions, or wrestling contests and exhibitions” for “boxing contests, boxing exhibitions, or wrestling exhibitions” and “spontaneous contests and exhibitions” for “spontaneous boxing contests, boxing exhibitions or wrestling exhibitions,” and in the second sentence, substituted “conduct contests and exhibitions” for “conduct boxing

contests and boxing exhibitions or wrestling exhibitions.”

The 2009 amendment, by ch. 93, rewrote the section catchline, which formerly read: “Sanctioning permit for boxing, kickboxing, martial arts and wrestling events-Telecasts”; and, in the first sentence, inserted “immediately” and substituted “to conduct amateur and professional contests and exhibitions” for “to conduct boxing contests and exhibitions, and kickboxing contests and exhibitions, martial arts contests and exhibitions, or wrestling contests and exhibitions.”

Compiler’s Notes.

The bracketed insertion in the last sentence was added by the compiler to supply an obviously missing word from the enacting legislation.

54-406. Duties of commission — Sanctioning permits — Licensing — Exemptions — Medical certification. — (1) The commission shall have power, and it shall be its duty, to direct, supervise and control all amateur and professional contests and exhibitions within the state and no such contest or exhibition shall be held or given within this state except in accordance with the provisions of this chapter. The commission has authority to adopt rules to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission including, but not limited to:

- (a) Development of an ethical code of conduct for commissioners, commission staff and commission officials;
- (b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches;
- (c) Requirements regarding a participant’s apparel, bandages, handwraps, gloves, mouthpiece and appearance during a match;
- (d) Requirements relating to a manager’s participation, presence and conduct during a match;
- (e) Duties and responsibilities of all licensees under this chapter;
- (f) Procedures for hearings and resolution of disputes;
- (g) Qualifications for appointment of referees and judges;
- (h) Designation and duties of a knockdown timekeeper;
- (i) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission;

(j) Establishment of criteria for approval, disapproval, suspension of approval and revocation of approval of amateur sanctioning organizations for amateur contests and exhibitions held in this state including, but not limited to, the health and safety standards the organizations use before, during and after the matches to ensure the health, safety and well-being of the amateur combatants participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety and well-being of the amateur combatants participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of United States amateur boxing, inc., as the minimum health and safety standards for an amateur boxing sanctioning organization, and the health and safety standards of the international amateur kickboxing sport association as the minimum health and safety standards for an amateur kickboxing sanctioning organization; and

(k) Establish fees to be paid by an amateur athletic sanctioning organization that is approved pursuant to subsection (3)(b)(ii) of this section, which fees shall include:

(i) Initial and annual application processing fees of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000); and

(ii) Initial and annual approval fees of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000).

(2) The commission may, in its discretion, issue or refuse to issue and for cause immediately revoke any sanctioning permit whether or not an admission fee is charged by any person, organization, association or fraternal society. The commission may also, in its discretion, issue or refuse to issue and for cause immediately revoke, suspend or otherwise discipline licenses for participants of sanctioned contests and exhibitions.

(3) Specifically exempt from the provisions of this chapter are all contests or exhibitions that:

(a) Are contests or exhibitions conducted by any secondary school, college or university, whether public or private, where all the participating contestants are bona fide students enrolled in any secondary school, college or university, within or without this state;

(b) Are entirely contests or exhibitions in which all combatants are amateurs and which have been sanctioned as amateur athletic contests or exhibitions by any of the following associations:

(i) United States amateur boxing, inc., also known as USA boxing, inc., the amateur athletic union of the United States, inc., also known as the national amateur athletic union, the amateur athletic union and the AAU or any similar nationally recognized entity approved by the commission; or

(ii) Any other entity that the commission approves to be an amateur athletic sanctioning organization, which approval shall be subject to annual review for purposes of renewal. Notwithstanding any other provision of this chapter, the promoter of any contest or exhibition

sanctioned by an organization approved pursuant to this subparagraph shall comply with sections 54-408, 54-411, 54-413, 54-417, 54-419, 54-421 and 54-422, Idaho Code, and the promoter and each participant in such contest or exhibition are subject to sections 54-416, 54-418 and 54-420, Idaho Code, unless specifically exempted by commission rule;

(c) Are contests or exhibitions held under the auspices or sanction of an established nonprofit secondary school activities organization or of its public or nonprofit accredited secondary school members, or held under the auspices or sanction of an established college or university activities organization or its public or not-for-profit accredited college or university members; or

(d) Are contests or exhibitions conducted by any military installation or branch of the United States armed forces, or the state national guard, where the participants are employed by the military installation, are members of the branch of the armed forces, or the state national guard unit conducting the contest or exhibition.

(4) Provided further that every combatant in any contest or exhibition exempt under the provisions of this chapter, prior to engaging in and conducting such contest or exhibition, shall be examined by a licensed physician at least once in each calendar year, or where such contest is conducted by a secondary school, college or university or organization as further described in this section, once in each academic year in which instance the physician shall also designate the maximum and minimum weights at which the combatant shall be medically certified to participate. Provided further that no combatant shall be permitted to participate in any such contest or exhibition in any weight classification other than that or those for which he is certificated. Provided further that the exempted organizations shall be governed by the provisions of section 54-414, Idaho Code, as that section applies to contests or exhibitions conducted by persons exempted in this section from the general provisions of this chapter. No contest or exhibition shall be conducted within this state except pursuant to a license issued in accordance with the provisions of this chapter and the rules of the commission except as hereinabove provided.

History.

I.C., § 54-406, as added by 1992, ch. 229, § 2, p. 679; am. 2004, ch. 385, § 6, p. 1147;

am. 2007, ch. 149, § 6, p. 444; am. 2009, ch. 93, § 3, p. 270; am. 2010, ch. 311, § 2, p. 831.

STATUTORY NOTES

Prior Laws.

Former § 54-406 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, throughout the section, deleted references to “boxing” and “wrestling” with regard to contests and exhibitions; in the introductory paragraph in subsection (1), inserted “kickboxing contests and exhibitions, martial arts contests and exhibitions” and “contests and” following

“wrestling,” and added the last sentence; added subsections (1)(a) through (1)(j); redesignated the former second and third sentences in subsection (1) as subsection (2), and therein twice inserted “or refuse to issue,” substituted “whether or not an admission fee is charged” for “where an admission fee is charged,” and inserted “or suspend or otherwise sanction,” and redesignated subsections accordingly; and in subsection (4), substituted “exhibition exempt under the provisions of this chapter” for “exhibition not conducted

under the provisions of this chapter.”

The 2009 amendment, by ch. 93, substituted “all amateur and professional contests and exhibitions” for “all boxing contests and exhibitions, kickboxing contests and exhibitions, martial arts contests and exhibitions, and wrestling contests and exhibitions conducted” in the introductory paragraph in subsection (1); substituted “contests and exhibitions” for “boxing and kickboxing matches” and inserted “combatants” twice in the first sentence in paragraph (1)(j); inserted “amateur and professional” in the first sentence and “immediately” in both the first and second sentences in subsection (2); substituted “combatants” for “contestants” and “contests or exhibitions” for “events” in the introductory paragraph in paragraph (3)(b); added “which shall be subject to annual review for purposes of renewal” at the end of paragraph (3)(b)(iii); and substituted “combatant” for “contestant” three times in subsection (4).

The 2010 amendment, by ch. 311, added

paragraph (1)(k); in subsection (2), in the first sentence, substituted “any sanctioning permit” for “sanctioning permits to conduct, hold or give amateur and professional contests or exhibitions” and in the last sentence, substituted “discipline” for “sanction”; and rewrote paragraph (3)(b), combining former paragraphs (1) and (2) in present paragraph (i) and redesignating former paragraph (iii) as present paragraph (ii).

Compiler’s Notes.

For more on United States amateur boxing, inc., also known as USA boxing, inc., see <http://usaboxing.org>.

The international amateur kickboxing sport associating, referred to in paragraph (1)(j), merged into the world association of kickboxing organizations (WAKO) in 2006. See <http://www.wakoweb.com>.

For more information on the amateur athletic union of the United States, inc., or AAU, see <http://aausports.org>.

54-407. Time between boxing contests. — (1) In no case may a boxing combatant participate in more than one (1) boxing contest or exhibition in any twenty-four (24) hour period.

(2) Without the special permission of the commission, a boxing combatant may not compete in a boxing contest or exhibition in this state unless:

- (a) Four (4) days have elapsed since his last contest if the contest lasted for no more than four (4) rounds.
- (b) Seven (7) days have elapsed since his last contest if the contest lasted five (5) or six (6) rounds.
- (c) Fourteen (14) days have elapsed since his last contest if the contest lasted seven (7) or eight (8) rounds.
- (d) Twenty-one (21) days have elapsed since his last contest if the contest lasted nine (9) or ten (10) rounds.
- (e) Forty-five (45) days have elapsed since his last contest if the contest lasted eleven (11) or twelve (12) rounds.

History.

I.C., § 54-407, as added by 2004, ch. 385, § 7, p. 1147; am. 2009, ch. 93, § 4, p. 270.

STATUTORY NOTES

Prior Laws.

Another former § 54-407 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2009 amendment, by ch. 93, in subsections (1) and (2), substituted “combatant” for “contestant”; in subsection (2)(c), substituted “seven (7) or eight (8) rounds” for “nine (9) or

ten (10) rounds”; and deleted subsection (2)(f), which read: “Sixty (60) days have elapsed since his last contest if the contest lasted thirteen (13) or more rounds.”

Compiler’s Notes.

Former § 54-407, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-408 by S.L. 2004, ch. 385, § 8.

54-408. Promoters — Bond or other security — Medical insurance. — (1) Before any sanctioning permit is issued to any promoter to conduct or hold a contest or exhibition and before an approved amateur athletic sanctioning organization sanctions an exempt amateur event, the promoter shall file with the commission a bond or other form of financial security payable to the state of Idaho in an amount determined by the commission, executed by the promoter and a surety company or companies authorized to do business in this state, and conditioned upon the faithful performance by the promoter, which shall include, but not be limited to, the cancellation of a sanctioned contest or exhibition without good cause as determined by the commission.

(2) The bond or other form of financial security required under this section shall guarantee the payment of all taxes, fees, fines and other moneys due and payable pursuant to the provisions of this chapter and the rules of the commission or regulations of an approved amateur athletic sanctioning organization, as applicable, including, but not limited to, the payment of purses to the participants, other than the promoter, any contributions for required insurance, pensions, disability and medical examinations, the repayment to ticketholders of purchased tickets, and if applicable, the payment of fees to ring officials and physicians and, in the event of the cancellation of a sanctioned contest or exhibition without good cause, an amount determined by the commission.

(3) The commission may modify the amount of bond or other form of financial security if the commission determines that modification is required to ensure adequate and sufficient coverage for payment of taxes, fees, fines, purses and other moneys due and payable pursuant to the provisions of this section. Failure of any promoter to secure a modified bond or other form of financial security required pursuant to this subsection within such period of time as the commission may prescribe, shall be grounds for the commission to revoke any sanctioning permit and cancel any contest or exhibition.

(4) All proceeds collected pursuant to the provisions of this section shall be deposited in the state treasury to the credit of the occupational licenses fund [account].

(5) Promoters must obtain health insurance to cover any injuries incurred by participants, other than the promoter, at the time of the event.

History. § 8, p. 1147; am. 2007, ch. 149, § 7, p. 444; I.C., § 54-407, as added by 1992, ch. 229, am. 2009, ch. 93, § 5, p. 270; am. 2010, ch. § 2, p. 679; am. and redesi.g. 2004, ch. 385, 311, § 3, p. 831.

STATUTORY NOTES

Prior Laws. Another former § 54-408 was repealed. See Prior Laws, § 54-401.

Amendments. The 2007 amendment, by ch. 149, twice in subsection (1) and in subsection (2), substituted “a contest or exhibition” for “a boxing contest, boxing exhibition or wrestling exhibition”; updated the section reference in subsection (1); and in subsection (4), substituted “occupational licenses fund” for “state athletic commission fund.” The 2009 amendment, by ch. 93, in the section catchline, inserted “or other security”; throughout subsections (1) through (3), inserted “or other form of financial security”; near the end of subsection (2), inserted “and if applicable”; in subsection (4), deleted “bond” preceding “proceeds”; and, in subsection (5),

deleted "Boxing and wrestling" from the beginning.

The 2010 amendment, by ch. 311, rewrote the section to the extent that a detailed comparison is impracticable, ensuring that promoters obtain bonds and financial security before holding any event, whether or not the event is exempt.

Compiler's Notes.

This section was formerly codified as § 54-407.

Former § 54-408, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-410 by S.L. 2004, ch. 385, § 10.

The bracketed insertion in subsection (4) was added by the compiler to correct the name of the referenced account. See § 67-2605.

54-409. Considerations before issuance of license or sanctioning permit. — Before issuing any license or sanctioning permit, the commission shall consider the following in order of importance:

- (1) The preservation of the safety and health of the contestants;
- (2) The best interest and welfare of the public; and
- (3) The best interest of the sport in general.

History.

I.C., § 54-409, as added by 2004, ch. 385, § 9, p. 1147.

STATUTORY NOTES

Prior Laws.

Another former § 54-409 was repealed. See Prior Laws, § 54-401.

ch. 229, § 2, p. 679, amended and redesignated as § 54-411 by S.L. 2004, ch. 385, § 11.

Compiler's Notes.

Former § 54-409, which comprised 1992,

54-410. Issuance of a license or sanctioning permit. — Upon the approval by the commission of any application for a license or sanctioning permit, the payment of such fees as determined by the commission and the filing of the bond or other form of financial security as the commission may require, the commission shall forthwith issue such license or sanctioning permit.

History.

I.C., § 54-408, as added by 1992, ch. 229, § 2, p. 679; am. and redesign. 2004, ch. 385,

§ 10, p. 1147; am. 2009, ch. 93, § 6, p. 270; am. 2010, ch. 311, § 4, p. 831.

STATUTORY NOTES

Prior Laws.

Another former § 54-410 was repealed. See Prior Laws, § 54-401.

and the" and "as the commission may require."

Amendments.

The 2009 amendment, by ch. 93, inserted "or other form of financial security."

The 2010 amendment, by ch. 311, deleted "as hereinabove provided, and" following "sanctioning permit," and inserted "payment of such fees as determined by the commission

Compiler's Notes.

This section was formerly compiled as § 54-408.

Former § 54-410, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-413, by S.L. 2004, ch. 385, § 13.

54-410A, 54-410B. License and sanction of state athletic director — Reports of a tax on admission charges for showing of telecasts of boxing, sparring, and wrestling matches — Personal and private venture — Limitation of Profit. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised I.C., § 54-410A, as added by 1967, ch. 153, § 2, p. 343;

I.C., § 54-410B, as added by 1972, ch. 179, § 13, p. 446; am. 1972, ch. 179, § 12, p. 446, were repealed by S.L. 1992, ch. 229, § 1.

54-411. Statement and report of event — Tax on gross receipts. —

(1) Any promoter as herein provided shall, at least seven (7) days prior to the holding of any contest or exhibition, file with the commission a statement setting forth the name of each combatant, his manager or managers, the total number of tickets available for the contest or exhibition and such other information as the commission may require. The promoter shall simultaneously pay to the commission an initial event tax of four hundred dollars (\$400). Within seventy-two (72) hours after the termination of any contest or exhibition the promoter shall file with the commission representative a gross receipts report, duly verified as the commission may require showing the number of tickets sold for such contest or exhibition, the price charged for such tickets and the gross receipts thereof without any deduction whatsoever, and such other and further information as the commission may require. If the initial event tax previously paid is less than five percent (5%) of the gross receipts for the event, then the promoter shall pay to the commission at the time of filing the above report an additional event tax equal to five percent (5%) of the gross receipts, minus the initial event tax previously paid, for deposit by the commission.

(2) The number of complimentary tickets shall be limited to two percent (2%) of the total tickets sold per event location. All complimentary tickets exceeding this set amount shall be subject to taxation. The promoter shall limit the number of persons admitted to the event to the number of available tickets that are actually sold, given away or otherwise issued for the event.

(3) Gross receipts reports signed under oath shall also include:

- (a) The name of the promoter;
- (b) The contest or exhibition sanctioning permit number;
- (c) The promoter's business address and any license or sanctioning permit number required of such promoter by law;
- (d) Gross receipts as specified by this section, during the period specified by this section; and
- (e) Such further information as the commission may require to enable it to compute correctly and collect the assessment levied pursuant to this section.

(4) In addition to the information required on gross receipts reports, the commission may request, and the promoter shall furnish, any information deemed necessary for a correct computation of the assessment levied pursuant to this section.

(5) All levies pursuant to this section shall be collected by the commission and shall be deposited in the state treasury to the credit of the occupational licenses fund [account].

(6) The moneys collected from the assessment levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the commission.

(7) The promoter shall compute and pay to the commission the required assessment due. If the payment of the assessment is not postmarked or delivered to the commission as specified in subsection (1) of this section, the assessment shall be delinquent from such date. In addition, if the promoter has not paid the initial event tax as provided in subsection (1) of this section, the promoter shall not hold the event.

(8) Of the moneys collected by the commission pursuant to the tax authorized in subsection (1) of this section, up to five percent (5%) of said tax may be used by the commission for the promotion and support of amateur contests and exhibitions in this state. All parties interested in receiving a distribution must submit an application to the commission which shall include the name of the person or entity applying and a detailed description of what the applicant intends to do with the distribution if granted. The commission shall consider all applications and assign distributions, if any, at the end of each fiscal year to those applicants the commission deems most qualified. The commission may make such distributions only if the commission has a positive balance within the occupational licenses fund [account] and sufficient revenue to cover its projected expenses for the upcoming year.

(9) It shall be the duty of every promoter required to make a gross receipts report and pay any assessment pursuant to the provisions of this section to keep and preserve suitable records and documents which may be necessary to determine the amount of assessment due as will substantiate and prove the accuracy of such reports. All such records shall be preserved for a period of three (3) years, unless the commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the commission or by its authorized agents.

History.

I.C., § 54-409, as added by 1992, ch. 229, § 2, p. 679; am. and redesisg. 2004, ch. 385,

§ 11, p. 1147; am. 2007, ch. 149, § 8, p. 444; am. 2008, ch. 113, § 1, p. 317; am. 2009, ch. 93, § 7, p. 270; am. 2010, ch. 311, § 5, p. 831.

STATUTORY NOTES

Prior Laws.

Former § 54-411, which comprised I.C., § 54-411, as added by 1992, ch. 229, § 2, p. 679, was repealed by S.L. 2004, ch. 385, § 1.

Another former § 54-411 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2008 amendment, by ch. 113, added present subsection (8) and redesignated former subsection (8) as subsection (9).

The 2007 amendment, by ch. 149, in subsection (1), deleted the former second sentence, which read: "Any promoter shall,

within seven (7) days before holding any wrestling exhibition, file with the commission a statement setting forth the name of each contestant, his manager or managers and such other information as the commission may require"; in subsection (5), substituted "occupational licenses fund" for "state athletic commission fund"; and in subsection (6), deleted "state athletic" preceding "commission."

The 2009 amendment, by ch. 93, in subsection (1), in the first sentence, substituted "professional combatant" for "contestant," deleted the former second sentence, which read: "Participant changes within a twenty-four

(24) hour period regarding a wrestling exhibition may be allowed after notice to the commission, if the new participant holds a valid license under this chapter," and in the present second sentence, inserted "or exhibition"; in subsection (3)(b), substituted "The contest or exhibition" for "The boxing contest, boxing exhibition or wrestling exhibition"; and in subsection (8), inserted "of said tax," substituted "amateur contests and exhibitions" for "amateur boxing," and added the last two sentences.

The 2010 amendment, by ch. 311, in subsection (1), in the first sentence, substituted "at least seven (7) days" for "within seven (7) days," deleted "professional" preceding "combatant," and inserted "the total number of tickets available for the contest or exhibition,"

added the second sentence, in the third sentence, inserted "without any deduction whatsoever," and in the last sentence, added "If the initial event tax previously paid is less than five percent (5%) of the gross receipts for the event, then," and inserted "an additional event" and "minus the initial event tax previously paid"; and added the last sentences in subsections (2), (7), and (8).

Compiler's Notes.

This section was formerly compiled as § 54-409.

The bracketed insertions at the end of subsection (5) and near the end of subsection (8) were added by the compiler to correct the name of the referenced account. See § 67-2605.

54-412. Funds. — All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from such fund [account].

History.

I.C., § 54-412, as added by 2004, ch. 385, § 12, p. 1147; am. 2007, ch. 149, § 9, p. 444.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Another former § 54-412 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, in the section catchline, deleted "State athletic commission" from the beginning; and rewrote the section, which formerly read: "The 'State Athletic Commission Fund' is a dedicated fund created, effective July 1, 1992, in the state treasury in the name of the commission. Mon-

ey in the fund may be expended pursuant to appropriation and shall be utilized by the commission to administer the provisions of this chapter."

Compiler's Notes.

Former § 54-412, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-414 by S.L. 2004, ch. 385, § 14.

The bracketed insertions in this section were added by the compiler to correct the name of the referenced account. See § 67-2605.

54-413. Simultaneous or closed-circuit telecasts — Report — Tax on gross receipts. — Every promoter who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current or spontaneous contest or exhibition on a closed-circuit telecast viewed within this state shall, within seventy-two (72) hours after such event, furnish to the commission a verified gross receipts report on a form which is supplied by the commission showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such promoter shall also at the same time pay to the commission a tax equal to five percent (5%) of such gross receipts paid for admission to the showing of the contest or exhibition. In no event, however, shall the tax be less than twenty-five

dollars (\$25.00). The tax shall apply uniformly at the same rate to all persons subject to the tax.

History.

I.C., § 54-410, as added by 1992, ch. 229, § 2, p. 679; am. and redesisg. 2004, ch. 385,

§ 13, p. 1147; am. 2007, ch. 149, § 10, p. 444; am. 2010, ch. 311, § 6, p. 831.

STATUTORY NOTES

Prior Laws.

Another former § 54-413 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, in the first sentence, substituted "spontaneous contest or exhibition" for "spontaneous boxing contest, boxing exhibition or wrestling exhibition," and deleted the former last sentence, which read: "Such receipts shall be paid

within twenty-four (24) hours by the commission into the state athletic commission fund."

The 2010 amendment, by ch. 311, twice substituted "promoter" for "licensee."

Compiler's Notes.

This section was formerly compiled as § 54-410.

Former § 54-413, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-415 by S.L. 2004, ch. 385, § 15.

54-413A. Amateur rules. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 54-

413A, as added by 1972, ch. 179, § 17, p. 446, was repealed by S.L. 1992, ch. 229, § 1.

54-414. Boxing rounds and bouts limited. — No boxing contest or boxing exhibition held in this state whether under the provisions of this chapter or otherwise shall be for more than ten (10) rounds. Each round in a contest or exhibition shall be scheduled to last for the same length of time. No one (1) round of any boxing contest or exhibition shall be scheduled for longer than three (3) minutes and there shall be not less than one (1) minute intermission between each round. In the event of bouts involving a state or regional championship, the commission may grant an extension of no more than two (2) additional rounds to allow total bouts of twelve (12) rounds. The commission shall promulgate rules to assure clean and sportsmanlike conduct on the part of all participants and officials, and the proper and orderly conduct of the contest or exhibition in all respects, including, but not limited to, the weight of the gloves required for contests and exhibitions, and to otherwise make rules consistent with this chapter, but such rules shall apply only to contests or exhibitions held under the provisions of this chapter.

History.

I.C., § 54-412, as added by 1992, ch. 229,

§ 2, p. 679; am. and redesisg. 2004, ch. 385, § 14, p. 1147; am. 2009, ch. 93, § 8, p. 270.

STATUTORY NOTES

Prior Laws.

Another former § 54-414 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2009 amendment, by ch. 93, in the section catchline, deleted "weight of gloves"

from the end; in the fourth sentence, deleted “and in bouts involving a national or world championship the commission may grant an extension of no more than five (5) additional rounds to allow total bouts of fifteen (15) rounds” from the end; deleted the former fifth sentence, which read: “No participant in any boxing contest or boxing exhibition shall be permitted to wear gloves weighing less than eight (8) ounces each; provided, however, that no participants weighing more than one hundred forty seven (147) pounds shall be permitted to wear gloves weighing less than ten (10)

ounces each”; and, in the last sentence, inserted “including, but not limited to, the weight of the gloves required for contests and exhibitions.”

Compiler’s Notes.

This section was formerly compiled as § 54-412.

Former § 54-414, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-416 by S.L. 2004, ch. 385, § 16.

54-415. Physician’s attendance — Examination of combatants. —

(1) Each combatant for a contest or exhibition shall be examined within thirty-six (36) hours prior to the contest or exhibition by a physician appointed by the commission. The physician shall forthwith and before such contest or exhibition report in writing and over his signature the physical condition of each and every combatant to the commissioner or agent present at such contest. Blank forms of physicians’ reports shall be provided by the commission and all questions upon such blanks shall be answered in full. At the discretion of the commission and immediately prior to a contest or exhibition, the commission may require a combatant to be examined by a physician appointed by the commission. No combatant whose physical condition is not approved by the examining physician shall be permitted to participate in any contest or exhibition. The promoter conducting such contest or exhibition shall pay the examining physician a fee in the amount designated by the commission. No contest or exhibition shall be held unless a physician is present throughout the contest or exhibition. The promoter shall pay the fees, in the amount designated by the commission, of the physician who is required to be present at a contest or exhibition.

(2) The physician present at the contest or exhibition shall have the authority to stop any contest or exhibition when in the physician’s opinion it would be dangerous for a combatant to continue.

History.

I.C., § 54-413, as added by 1992, ch. 229, § 2, p. 679; am. and redesign. 2004, ch. 385,

§ 15, p. 1147; am. 2007, ch. 149, § 11, p. 444; am. 2009, ch. 93, § 9, p. 270.

STATUTORY NOTES

Prior Laws.

Another former § 54-415 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, in the first paragraph, substituted “or agent” for “deputy commissioner or inspector” in the second sentence, inserted “and immediately,” and substituted “contest or exhibition” for “wrestling exhibition” in the fourth sentence, and in the last sentence, substituted “contest or exhibition” for “boxing contest, boxing exhibition or wrestling exhibition.”

The 2009 amendment, by ch. 93, throughout the section, substituted “combatant” for “contestant,” or similar language; added the subsection designations; in subsection (1), in the first sentence, deleted “boxing” preceding and following the first occurrence of “contest or” and substituted “thirty-six (36) hours” for “eight (8) hours,” and, in the next-to-last sentence, substituted “No contest or exhibition” for “No boxing contest, boxing exhibition or wrestling exhibition” and deleted “appointed by the commission” following “physician”; and deleted the first sentence in subsection (2), which read: “The commission may select any

practicing physician as the examining or attending physician.”

Compiler’s Notes.

This section was formerly compiled as § 54-413.

Former § 54-415, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-417 by S.L. 2004, ch. 385, § 17.

54-416. Annual licenses — Fees — Revocation. — (1) The commission shall grant annual licenses in compliance with the rules prescribed by the commission, and the payment of the fees, the amount of which is to be determined by the commission upon application, prescribed to promoters, managers, booking agents, matchmakers, ring officials, combatants and corner persons; provided, that the provisions of this section shall not apply to combatants or other persons who may participate in contests or exhibitions which are exempted from the provisions of this chapter pursuant to section 54-406(3), Idaho Code.

(2) Any such license may be revoked by the commission for any cause which it shall deem sufficient.

(3) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(4) The ring officials for any contest shall be designated by the commission from among the active pool of licensed or appointed ring officials.

(5) The ring officials for any exhibition shall be provided by the promoter and licensed by the commission.

History.

I.C., § 54-414, as added by 1992, ch. 229, § 2, p. 679; am. and redesign. 2004, ch. 385,

§ 16, p. 1147; am. 2007, ch. 149, § 12, p. 444; am. 2009, ch. 93, § 10, p. 270.

STATUTORY NOTES

Prior Laws.

Another former § 54-416 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, in subsection (1), substituted “shall grant” for “may grant” at the beginning, and updated the section reference; in subsection (4), deleted “boxing” preceding “contest”; in subsection (5), deleted “wrestling” preceding “exhibition”; and deleted subsection (6), which formerly read: “All fees collected pursuant to

this section shall be deposited in the state athletic commission fund.”

The 2009 amendment, by ch. 93, in subsection (1), twice substituted “combatants” for “boxers, wrestlers” and “contestants,” respectively.

Compiler’s Notes.

This section was formerly compiled as § 54-414.

Former § 54-416, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-418 by S.L. 2004, ch. 285, § 18.

54-417. Participation in purse — Conducting sham contests or exhibitions — Forfeiture of license. — Any person promoting exhibitions or contests who shall directly or indirectly participate in the purse or fee of any manager of any combatant and any licensee who shall conduct or participate in any sham or fake contest or exhibition shall thereby forfeit any licenses issued pursuant to this chapter and the commission shall declare the license canceled and void and the licensee shall not thereafter be entitled to receive another such license, or any license issued pursuant to the provisions of this chapter.

History.

I.C., § 54-415, as added by 1992, ch. 229, § 2, p. 679; am. and redesign. 2004, ch. 385,

§ 17, p. 1147; am. 2007, ch. 149, § 13, p. 444; am. 2009, ch. 93, § 11, p. 270.

STATUTORY NOTES**Prior Laws.**

Another former § 54-417 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, substituted “forfeit any licenses issued pursuant to this chapter” for “forfeit his license.”

The 2009 amendment, by ch. 93, in the section catchline, substituted “contests or exhibitions” for “boxing events”; and, in text, deleted “boxing” preceding “exhibitions,” sub-

stituted “manager of any combatant” for “manager of any boxers or any boxer,” and deleted “boxing” following “sham or fake.”

Compiler’s Notes.

This section was formerly compiled as § 54-415.

Former § 54-417, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-419 by S.L. 2004, ch. 385, § 19.

54-418. Violation of rules — Sham contests or exhibitions — Penalties. — Any participant who shall participate in any sham or fake contest or exhibition and any participant who violates any rule of the commission shall be penalized in the following manner. For the first offense he shall be restrained by order of the commission for a period of not less than three (3) months from participating in any contest or exhibition held under the provisions of this chapter, such suspension to take effect immediately after the occurrence of the offense, for any second offense such participant or licensee shall be forever suspended from participation in any contest or exhibition under the provisions of this chapter.

History.

I.C., § 54-416, as added by 1992, ch. 229,

§ 2, p. 679; am. and redesign. 2004, ch. 385, § 18, p. 1147; am. 2009, ch. 93, § 12, p. 270.

STATUTORY NOTES**Prior Laws.**

Another former § 54-418 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2009 amendment, by ch. 93, in the section catchline, substituted “sham contest or exhibitions” for “sham boxing events”; in the first sentence, deleted “or licensee” following the first occurrence of “participant,” deleted “boxing” preceding “contest,” and deleted “licensee or” preceding the last

occurrence of “participant”; and, in the last sentence, twice substituted “contest or exhibition” for “event.”

Compiler’s Notes.

This section was formerly compiled as § 54-416.

Former § 54-418, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-420 by S.L. 2004, ch. 385, § 20.

54-419. Inaccurate statement and report of event — Additional tax — Notice — Penalty for delinquency. — Whenever any promoter shall fail to make a report of any contest or exhibition within the time prescribed in this chapter or when such report is unsatisfactory to the commission, the commission or its agent may examine the books and records of such promoter; and may subpoena and examine under oath any officer of such promoter and such other person or persons as may be necessary to determine the total tax due. If upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be

served upon the promoter and if such promoter shall fail to pay such additional tax within twenty (20) days after service of such notice the delinquent promoter shall forfeit any licenses issued pursuant to this chapter and shall forever be disqualified from receiving any new license and in addition thereto, such promoter shall be liable to this state in the penal sum of ten thousand dollars (\$10,000) to be collected by the attorney general by such action as may be necessary and in the manner provided by law. All moneys collected pursuant to the provisions of this section shall be remitted to the occupational licenses fund [account]. Regardless of whether the delinquent promoter timely pays any additional tax, the commission may discipline the promoter for failing to make the statement and report of event within the prescribed time or for negligently or knowingly making an inaccurate statement and report of event.

History.

I.C., § 54-417, as added by 1992, ch. 229, § 2, p. 679; am. and redesign. 2004, ch. 385,

§ 19, p. 1147; am. 2007, ch. 149, § 14, p. 444; am. 2010, ch. 311, § 7, p. 831.

STATUTORY NOTES**Prior Laws.**

Another former § 54-419, as added by 1919, ch. 127, § 18, was repealed by 1992, ch. 229, § 1. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, in the first sentence, substituted “commission or its agent” for “commissioner or his designee” and “person or persons as may be necessary to determine” for “person or persons as he may deem necessary to a determination of”; in the second sentence, substituted “forfeit any licenses issued pursuant to this chapter” for “forfeit his license” and “by such action as may be necessary and in the manner provided” for “by civil action in the name of the state in the manner provided”; and in the last sentence, substituted “occupational licenses fund” for “state athletic commission fund.”

The 2010 amendment, by ch. 311, in the

section heading, substituted “Inaccurate statement and report of event” for “Failure to make reports”; throughout the section, substituted “promoter” for “licensee”; in the first sentence, substituted “may examine” for “shall examine,” deleted “gross receipts from any contest or exhibition and the amount of” following “determine the total,” and substituted “tax due” for “tax thereon”; and added the last sentence.

Compiler’s Notes.

This section was formerly compiled as § 54-417.

Former § 54-419, which comprised I.C., § 54-419, as added by 1992, ch. 229, § 2, p. 679, was repealed by S.L. 2004, ch. 385, § 1.

The bracketed insertion in the next-to-last sentence was added by the compiler to correct the name of the referenced account. See § 67-2605.

54-420. Prohibitions — Penalties — Injunctions. — (1) Any person conducting or participating in contests or exhibitions within this state without first having obtained a license or sanctioning permit in the manner provided in this chapter is in violation of the provisions of this chapter.

(2) It is unlawful for any promoter or person associated with or employed by any promoter to destroy any ticket or ticket stub, whether sold or unsold, within three (3) months after the date of any contest or exhibition.

(3) The striking of any individual who is not a licensed combatant in that particular contest or exhibition shall constitute grounds for suspension, revocation or both of a license issued pursuant to the provisions of this chapter.

(4) Any person violating any of the provisions of this chapter or the rules of the commission for which no penalty is otherwise herein provided, upon

conviction, shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars (\$1,000) or by incarceration in the county jail for not more than thirty (30) days or by both such fine and incarceration. The commission shall suspend or revoke the license of any person convicted of violating the provisions of this chapter and the rules of the commission.

(5) In addition to other penalties provided by law if, after a hearing in accordance with the provisions of this chapter and the rules of the commission, the commission shall find any person to be in violation of any of the provisions of this chapter, such person may be subject to an administrative penalty equal to the greater of five hundred dollars (\$500) or one percent (1%) of gross receipts received for each violation. Each day a person is in violation of the provisions of this chapter and the rules of the commission may constitute a separate violation. All administrative penalties collected pursuant to the provisions of this subsection shall be deposited in the state treasury to the occupational licenses fund [account]. Upon the request of the commission or its agent, the attorney general may institute action to enforce the administrative penalties imposed pursuant to this subsection in the district court for Ada county.

(6) Upon the request of the commission or its agent, the county prosecutor in the county where a violation has occurred or is about to occur may make application to the district court in the county for an order enjoining the acts or practices prohibited by the provisions of this chapter and the rules of the commission, and upon a showing that the person has engaged or is about to engage in any of the prohibited acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.

History.

I.C., § 54-418, as added by 1992, ch. 229, § 2, p. 679; am. and redsig. 2004, ch. 385,

§ 20, p. 1147; am. 2007, ch. 149, § 15, p. 444; am. 2009, ch. 93, § 13, p. 270; am. 2010, ch. 311, § 8, p. 831.

STATUTORY NOTES

Prior Laws.

Another former § 54-420 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2007 amendment, by ch. 149, in subsection (1), substituted “boxing contests or exhibitions, kickboxing contests or exhibitions, martial arts contests or exhibitions or wrestling contests or exhibitions” for “boxing contests, boxing exhibitions or wrestling exhibitions,” deleted “therefore” following “sanctioning permit,” and updated the section reference; in subsection (5), substituted “to the occupational licenses fund” for “to the credit of the state athletic commission fund” in the third sentence, and inserted “or its agent” in the fourth sentence; and in subsection (6), inserted “or its agent” near the beginning.

The 2009 amendment, by ch. 93, in subsection (1), deleted “boxing” preceding “contests

or exhibitions” and “kickboxing contests or exhibitions, martial arts contests or exhibitions or wrestling contests or exhibitions” preceding “within this state”; and, in subsection (3), substituted “combatant” for “contestant” and “contest or exhibition” for “boxing contest, boxing exhibition or wrestling exhibition.”

The 2010 amendment, by ch. 311, in subsection (1), deleted “excepting such contests excluded from the operation of the provisions of this chapter in section 54-406(3), Idaho Code” from the end.

Compiler’s Notes.

This section was formerly compiled as § 54-418.

Former § 54-420, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-421 by S.L. 2004, ch. 385, § 21.

The bracketed insertion in the next-to-last sentence in subsection (5) was added by the compiler to correct the name of the referenced account. See § 67-2605.

54-421. Emergency medical equipment and personnel. — A promoter shall have an ambulance or paramedical unit with appropriate resuscitation equipment continuously present at the event site during the performance of all contests and exhibitions in case a serious injury occurs.

History. § 2, p. 679; am. and redesign. 2004, ch. 385, I.C., § 54-420, as added by 1992, ch. 229, § 21, p. 1147; am. 2009, ch. 93, § 14, p. 270.

STATUTORY NOTES

Prior Laws.

Another former § 54-421 was repealed. See Prior Laws, § 54-401.

Amendments.

The 2009 amendment, by ch. 93, substituted “all contests and exhibitions” for “all boxing contests, boxing exhibitions and wrestling exhibitions.”

Compiler's Notes.

This section was formerly compiled as § 54-420.

Former § 54-421, which comprised 1992, ch. 229, § 2, p. 679, was amended and redesignated as § 54-422 by S.L. 2004, ch. 385, § 22.

54-422. Security — Promoter's responsibility. — A promoter shall ensure that adequate security personnel are present at a contest or exhibition to control the crowd or audience in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the event site or other facility and the commission.

History. § 2, p. 679; am. and redesign. 2004, ch. 385, I.C., § 54-421, as added by 1992, ch. 229, § 22, p. 1147; am. 2009, ch. 93, § 15, p. 270.

STATUTORY NOTES

Prior Laws.

Former § 54-422, as added by 1991, ch. 6, § 1, was repealed by 1992, ch. 229, § 1. See Prior Laws, § 54-401.

Former § 54-422, which comprised I.C., § 54-422, as added by 1992, ch. 229, § 2, p. 679, was repealed by S.L. 2004, ch. 385, § 1.

Amendments.

The 2009 amendment, by ch. 93, substituted “contest or exhibition” for “boxing contest, boxing exhibition or wrestling exhibition.”

tuted “contest or exhibition” for “boxing contest, boxing exhibition or wrestling exhibition.”

Compiler's Notes.

This section was formerly compiled as § 54-421.

CHAPTER 5

BARBERS

SECTION.

54-501. Requirements of licensure and barbershop licensure.

54-502. Practice defined.

54-503. Practice of apprentice. [Repealed.]

SECTION.

54-504. Exceptions.

54-505. Qualifications for certificate of registration as registered barber. [Repealed.]

SECTION.

- 54-506. Qualifications for licensure.
- 54-507. Approved barber colleges — Requirements — Bond.
- 54-508. One instructor for each fifteen students. [Repealed.]
- 54-509. Application for examination.
- 54-510. Examinations.
- 54-511. Issuance of certificate of registration and license.
- 54-512. Persons having practiced barbering or barber-styling in another state or country.
- 54-513. Performance of services to be limited to licensed shops and schools or colleges.
- 54-514. Display of license.
- 54-515. Renewal and reinstatement of licenses.

SECTION.

- 54-516. Refusal, revocation or suspension of license.
- 54-517. Hearings.
- 54-518. Fees.
- 54-519. Certain acts prohibited.
- 54-520. False affidavit as perjury.
- 54-521. Board of barber examiners — Powers and duties — Designation of persons to report to board.
- 54-522. Public record for licenses.
- 54-523. Use of terminology limited — Barber poles.
- 54-524. Inspection.
- 54-525. Separability.
- 54-526. Short title.
- 54-527 — 54-529. [Repealed.]
- 54-530. Judicial review.

54-501. Requirements of licensure and barbershop licensure. — In order to safeguard the public health, safety and welfare, it shall be unlawful to practice, or attempt to practice barbering or barber-styling without a license issued pursuant to provisions of this chapter by the board of barber examiners.

In order to safeguard the public health, safety and welfare, it shall be unlawful to own or operate any barbershop unless a barbershop license is first obtained from the board. The applicant for such license must furnish proof that the shop is located and equipped to meet the sanitary requirements and rules of the board. The maintenance of a bona fide establishment with a permanent and definite location shall be prerequisite for the issuance of a barbershop license, the establishment of itinerant shops being prohibited. The holder of a barbershop license must notify the board in writing of any change of address and at the same time shall return said license, upon the face of which such change shall be properly endorsed. A change of address by a licensee without such notice and endorsement shall operate to cancel the license.

History.

1927, ch. 245, § 1, p. 389; I.C.A., § 53-601; am. 1935, ch. 28, § 1, p. 44; am. 1957, ch. 232, § 1, p. 541; am. 1974, ch. 13, § 37, p. 138; am.

1980, ch. 79, § 1, p. 161; am. 1981, ch. 116, § 1, p. 197; am. 1990, ch. 163, § 1, p. 355; am. 1995, ch. 77, § 1, p. 207; am. 2001, ch. 133, § 1, p. 473; am. 2007, ch. 195, § 1, p. 573.

STATUTORY NOTES

Cross References.

Barbers exempt from provisions of Idaho cosmetic law, § 54-804.

Board of barber examiners, § 54-521.

Amendments.

The 2007 amendment, by ch. 195, in the first paragraph, deleted “After July 1, 1927” from the beginning and “as a registered bar-

ber” following “license,” inserted “or barber-styling,” and substituted “chapter” for “act”; and in the last paragraph, deleted “After July 1, 1957” from the beginning.

Effective Dates.

Section 4 of S.L. 1995, ch. 77 declared an emergency. Approved March 10, 1995.

JUDICIAL DECISIONS

ANALYSIS

Barber law invalid in part.
 Constitutionality.
 Employer-employee relationship.
 Legislative discretion as to public interest.
 Regulations must be reasonable.

Barber Law Invalid in Part.

The portions of the barber law, requiring knowledge of massaging and manipulation of muscles of upper body and knowledge of diseases of nails, to obtain a certificate of registration as a barber, are invalid as in violation of the Fourteenth Amendment, but the portion of such act and regulations of the board of examiners, requiring training, experience and practice immediately before the application for registration, six months' study in an approved barber school, an eighth grade education, and knowledge of bacteriology, including infections of the skin, head and neck, and of muscles, nerves and glands in the head and neck, are valid, reasonable and within the legislature's authority. Thus, the invalid requirements do not affect the balance of the law, insofar as it can be given effect without invalid portions. *Montejano v. Rayner*, 33 F. Supp. 435 (D. Idaho 1939).

Constitutionality.

This state did not infringe impermissibly upon the barber's constitutionally protected religious beliefs by requiring him to obtain a license and a certificate of registration as a barber; the barbering laws are directed at public health and safety aspects of a commercial activity, their primary effect is clearly secular, these laws do not entangle the government with religion except in the rare instance where an individual espouses a faith with tenets so sweeping that all secular laws are implicated, and the state's interest in protecting public health and safety overrides

the religious claim. *Gregersen v. Blume*, 113 Idaho 220, 743 P.2d 88 (Ct. App. 1987), appeal dismissed, 485 U.S. 1001, 108 S. Ct. 1460, 99 L. Ed. 2d 691 (1988).

Employer-Employee Relationship.

The requirement that the owner or operator of a barbershop must furnish proof the shop is located and equipped to meet sanitary requirements gives the owner or operator the right and duty to control the acts of the barbers in the shop which have influence on the public health. This is sufficient to create the employer-employee relationship. *Byrd v. Employment Sec. Agency*, 86 Idaho 469, 388 P.2d 100 (1964).

Legislative Discretion as to Public Interest.

Large discretion is vested in state legislature to adopt measures necessary to determine what the public interest requires in the regulation of barbering business, and every reasonable presumption must be indulged in favor of such measures. *Montejano v. Rayner*, 33 F. Supp. 435 (D. Idaho 1939).

Regulations Must Be Reasonable.

Regulations prescribed, regulating the barbershops, must be reasonable and bear some relation to the objectives sought to be attained, which is protection of the public from being misled or mistreated by incompetent barbers. *Montejano v. Rayner*, 33 F. Supp. 435 (D. Idaho 1939).

Cited in: *Pearce v. Moffatt*, 60 Idaho 370, 92 P.2d 146 (1939).

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 1 et seq.

A.L.R. — Liability of barber, beauty shop or specialist, barber college, or school of beauty

culture, for injury to patron. 93 A.L.R.3d 897; 81 A.L.R.4th 444.

Liability of cosmetology school for injury to patron. 81 A.L.R.4th 444.

54-502. Practice defined. — Any one (1) or any combination of the following practices, when done upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public generally, constitutes the practice of barbering or barber-styling:

- (1) Barber-styling:

- (a) Shaving or trimming the beard or cutting, trimming, arranging, dressing, curling, waving by any method, straightening, cleansing, singeing, bleaching, coloring, or similar work upon the hair;
- (b) Fitting, cutting or dressing hairpieces or toupees;
- (c) Giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;
- (d) Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body.

(2) Barbering:

- (a) Shaving or trimming the beard or cutting, trimming, arranging, dressing, curling, cleansing, singeing, or similar work upon the hair;
- (b) Fitting, cutting or dressing hairpieces or toupees;
- (c) Giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;
- (d) Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body.

(3) Barber Instructing: Providing practical and theoretical instruction in any one (1) or any combination of the practices set forth in subsections (1) and (2) of this section. A barber instructor license issued by the board shall permit the holder to both practice and instruct only within the scope of the instructor's board approved training and experience. The holder of a barber license issued by the board who is subsequently issued a barber instructor license shall be permitted to practice and instruct only within the definition of barbering.

History.

1927, ch. 245, § 2, p. 389; I.C.A., § 53-602; am. 1975, ch. 84, § 1, p. 170; am. 2001, ch.

133, § 2, p. 473; am. 2007, ch. 195, § 2, p. 573.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 195, added the

alphabetical designations and added subsection (3).

JUDICIAL DECISIONS

Prisons.

A prison is required to provide "basic sanitation" in haircutting; "basic sanitation" incorporates each of the health-related safeguards contained in the regulations promulgated by the state board of barber examiners. *Wilson v.*

State, 113 Idaho 563, 746 P.2d 1022 (Ct. App. 1987).

Cited in: *Pearce v. Moffatt*, 60 Idaho 370, 92 P.2d 146 (1939).

54-503. Practice of apprentice. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1927, ch. 245, § 3, p. 389; am. 1929, ch. 261, § 1, p.

536; I.C.A., § 53-603; am. 1975, ch. 84, § 2, p. 170; am. 1980, ch. 79, § 2, p. 161, was repealed by S.L. 1990, ch. 163, § 2.

54-504. Exceptions. — (1) The provisions of this chapter shall not apply in the following instances:

- (a) Persons authorized by the laws of the state to practice as a nurse or any of the healing arts while in the proper discharge of their professional duties;
- (b) Persons who are licensed to practice cosmetology in this state, provided however, the provisions of this section shall not be construed to authorize such persons to practice barbering except those acts that are permitted under the Idaho cosmetology law;
- (c) Persons practicing in their own home on members of their immediate family without compensation; and
- (d) Persons and the facility that render barber or barber-stylist services upon persons who are incarcerated in the state of Idaho based upon a criminal offense.

(2) The provisions of section 54-513, Idaho Code, shall not apply to licensed parties performing barber or barber-styling services for persons unable by reason of ill health or medical confinement to go to a barber establishment.

History. § 2, p. 536; I.C.A., § 53-604; am. 2003, ch. 54, 1927, ch. 245, § 4, p. 389; am. 1929, ch. 261, § 1, p. 196; am. 2009, ch. 73, § 1, p. 208.

STATUTORY NOTES

Cross References. subsection (1)(d); and in subsection (2), deleted "or involuntary incarceration" following "medical confinement."

Amendments.
The 2009 amendment, by ch. 73, added

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 11.

54-505. Qualifications for certificate of registration as registered barber. [Repealed.]

STATUTORY NOTES

Compiler's Notes. ch. 195, § 1, p. 426; am. 1961, ch. 204, § 1, p. 323; am. 1963, ch. 295, § 1, p. 777; am. 1974, ch. 13, § 38, p. 138; am. 1975, ch. 84, § 3, p. 170; am. 1980, ch. 79, § 3, p. 161, was repealed by S.L. 1990, ch. 163, § 2.

54-506. Qualifications for licensure. — (1) A person is qualified to receive a license to practice as a barber-stylist who:

- (a) Has two (2) years of high school or an equivalent education as determined by the board;
- (b) Is at least sixteen and one-half (16 1/2) years of age;
- (c) Is of good moral character;
- (d) Has completed and graduated from a course of instruction of at least

one thousand eight hundred (1,800) hours in a school of barbering approved by the board; and

(e) Successfully passes an examination approved by the board.

(2) A person is qualified to receive a license to practice as a barber who:

(a) Has two (2) years of high school or an equivalent education as determined by the board;

(b) Is at least sixteen and one-half (16 1/2) years of age;

(c) Is of good moral character;

(d) Has completed and graduated from a course of instruction of at least nine hundred (900) hours in a school of barbering approved by the board; and

(e) Successfully passes an examination approved by the board.

(3) A person is qualified to receive a license to practice as a barber instructor who:

(a) Holds a current barber license issued by the board;

(b) Has satisfactorily completed a minimum six (6) month course of barber instructing as a student in a properly licensed barber college and has a minimum of one (1) year's experience as an apprentice in a licensed barber college, or as a barber in a licensed establishment, within the last three (3) years;

(c) Is of good moral character; and

(d) Successfully passes an examination approved by the board.

(4) A person is qualified to be a student who:

(a) Has attained the age of sixteen and one-half (16 1/2) years;

(b) Has a tenth grade or an equivalent education as determined by the board; and

(c) Registers as a student in a licensed barber college.

(5) A person is qualified to receive a license to practice as a barber-stylist instructor who:

(a) Holds a current Idaho barber-stylist license or a registered cosmetologist license;

(b) Has satisfactorily completed a minimum six (6) month course of barber-stylist instructing as a student in a properly licensed barber college and has a minimum of one (1) year's experience as an apprentice in a licensed barber college, or as a barber-stylist or registered cosmetologist in a licensed establishment, within the last three (3) years;

(c) Is of good moral character; and

(d) Successfully passes an examination approved by the board.

History.

1927, ch. 245, § 6, p. 389; am. 1929, ch. 261, § 4, p. 536; I.C.A., § 53-606; am. 1935, ch. 28, § 3, p. 44; am. 1957, ch. 232, § 3, p. 541; am. 1959, ch. 195, § 2, p. 426; am. 1961, ch. 204, § 2, p. 323; am. 1963, ch. 295, § 2, p. 777; am.

1974, ch. 13, § 39, p. 138; am. 1975, ch. 84, § 4, p. 170; am. 1976, ch. 166, § 4, p. 596; am. 1980, ch. 79, § 4, p. 161; am. 1990, ch. 163, § 3, p. 355; am. 2001, ch. 133, § 3, p. 473; am. 2007, ch. 195, § 3, p. 573; am. 2008, ch. 110, § 1, p. 309; am. 2010, ch. 257, § 1, p. 655.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 195, added subsections (3) and (4).

The 2008 amendment, by ch. 110, in paragraphs (1)(a) and (2)(a), deleted "an examination conducted by" preceding "the board"; and in paragraphs (1)(e), (2)(e), and (3)(d), substituted "passes an examination approved by the board" for "passes an examination under the supervision of the board of barber examiners."

The 2010 amendment, by ch. 257, in paragraph (3)(a), deleted "or barber stylist" preceding "license"; in paragraph (3)(b), substituted "experience as an apprentice in a licensed barber college, or as a barber in a licensed establishment" for "experience in practical barbering"; and added subsection (5).

JUDICIAL DECISIONS

Cited in: *Pearce v. Moffatt*, 60 Idaho 370, 92 P.2d 146 (1939); *Gregersen v. Blume*, 113 Idaho 220, 743 P.2d 88 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, §§ 11, 12.

54-507. Approved barber colleges — Requirements — Bond. —

(1) No school teaching the art or science of barbering shall operate in Idaho or be licensed as a school of barbering, unless the entrance requirements are equal to those which are required under section 54-506, Idaho Code. An approved college may teach special courses, but as a prerequisite to graduation the college must provide:

(a) A course of instruction for barber-stylists of not less than one thousand eight hundred (1,800) hours and include in its course of instruction the Idaho barber law and board rules and the scientific fundamentals for barbering: hygiene; bacteriology; histology of the hair, skin, nails, muscles and nerves; structure of the head, face and neck; elementary chemistry relating to sterilization and antiseptics; diseases of the skin, hair, glands and nails; massaging and manipulating the muscles of the upper body; hair cutting; shaving; and arranging, dressing, curling, waving, straightening, coloring, bleaching and tinting of the hair; and

(b) A course of instruction for barbers of not less than nine hundred (900) hours and include in its course of instruction the Idaho barber law and board rules and the scientific fundamentals for barbering: hygiene; bacteriology; histology of the hair, skin, nails, muscles and nerves; structure of the head, face and neck; elementary chemistry relating to sterilization and antiseptics; diseases of the skin, hair, glands and nails; massaging and manipulating the muscles of the upper body; hair cutting; shaving; and arranging and dressing of the hair.

(2) For the purpose of this chapter, a recognized approved barber school or college (hereinafter referred to as a college) shall be understood to be a college that has met the provisions of this chapter as approved by the board.

(3) No college in the state shall advertise or use any signs or terms to indicate that the college is approved, recognized, accredited, certified, or licensed unless said college is licensed by the board. Every college shall

advertise as a college and make known to the public and customers that the work is being done by students.

(4) All instructors in an approved college must be licensed in the state of Idaho as a barber instructor or a cosmetology instructor.

(5) Every instructor in an Idaho licensed college shall devote his or her entire time during class hours to that of instructing the students and shall not apply his time to that of private or public practice during the school or class hours.

(6) A college furnishing satisfactory evidence that it is maintaining the requirements set forth in this chapter, within the state, shall, upon the payment of the required fee, be issued a license by the board.

(7) A license issued to a college must be renewed annually. Should a college fail or refuse to renew a license said college shall cease to operate, and be removed from the list of the approved colleges.

(8) The board may cancel or refuse to renew a license issued to a college upon proof that said college has failed or refused to meet with the requirements for approved colleges set forth in this chapter.

(9) One (1) instructor must be employed to each twenty (20) students or fractional part thereof and one (1) barber instructor must be employed on a full-time basis in each school or college.

(10) Every school or college licensed by the board shall deliver to the board, a bond to the state of Idaho in the sum of twenty thousand dollars (\$20,000) in a form approved by the board, and provide a copy of the bond annually together with the application for school license renewal. The bond shall be executed by a corporate surety company duly authorized to do business in this state, conditioned that such school or college shall continue to give its courses of instruction, in accordance with the provision of this chapter, until it has completed all such courses for which students have enrolled, and conditioned that such school or college shall fully comply with all promises or representations made to enrolled students as an inducement to such students to enroll. Any student so enrolled who may be damaged by reason of the failure of such school or college to comply with such conditions, shall have a right of action in his or her own name, on such bonds, for such damage.

History.

1927, ch. 245, § 7, p. 389; am. 1929, ch. 261, § 5, p. 536; I.C.A., § 53-607; am. 1935, ch. 28, § 4, p. 44; am. 1961, ch. 204, § 3, p. 323; am. 1974, ch. 13, § 40, p. 138; am. 1975, ch. 84, § 5, p. 170; am. 1980, ch. 79, § 5, p. 161; am.

1990, ch. 163, § 4, p. 355; am. 2001, ch. 133, § 4, p. 473; am. 2003, ch. 21, § 2, p. 77; am. 2003, ch. 54, § 2, p. 196; am. 2005, ch. 275, § 1, p. 846; am. 2010, ch. 257, § 2, p. 655; am. 2011, ch. 221, § 1, p. 608.

STATUTORY NOTES

Cross References.

Requirements of students, § 54-506.

Amendments.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment by ch. 21, § 2, de-

leted “on July first of each year” following “A license issued to a college must be renewed annually” in the sixth undesignated paragraph [now (7)].

The 2003 amendment by ch. 54, § 2, re-wrote the first sentence of the final undesignated paragraph [now (10)]

The 2010 amendment, by ch. 257, desig-

nated the introductory paragraph as the introductory paragraph in subsection (1) and designated former subsections (1) and (2) as paragraphs (a) and (b) therein; added the subsequent designations; and in subsection (9), substituted "twenty (20) students" for "fifteen (15) students."

The 2011 amendment, by ch. 221, in paragraphs (1)(a) and (1)(b), inserted "the Idaho barber law and board rules and."

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

The Idaho barber law, referred to in paragraphs (1)(a) and (1)(b), is chapter 5, title 54, Idaho Code. See § 54-526.

JUDICIAL DECISIONS

Cited in: *Pearce v. Moffatt*, 60 Idaho 370, 92 P.2d 146 (1939); *Jones v. State Bd. of Medicine*, 97 Idaho 859, 555 P.2d 399 (1976);

Gregersen v. Blume, 113 Idaho 563, 743 P.2d 88 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and cosmetologists, § 8.

54-508. One instructor for each fifteen students. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised (1939, ch. 29, § 1, p. 60; am. 1961, ch. 204, § 4, p. 323) was

repealed by S.L. 1982, ch. 131, § 1. See § 54-507.

54-509. Application for examination. — Each applicant for examination shall:

Make application to the board of barber examiners on blank forms prepared and furnished by said board and furnish to the board one (1) passport photograph of the applicant, which shall accompany the application together with the required fees.

History.

1927, ch. 245, § 8, p. 389; I.C.A., § 53-608; am. 1935, ch. 28, § 5, p. 44; am. 1961, ch. 204,

§ 5, p. 323; am. 1974, ch. 13, § 41, p. 138; am. 1981, ch. 116, § 2, p. 197; am. 1982, ch. 131, § 2, p. 374; am. 2001, ch. 133, § 5, p. 473.

54-510. Examinations. — The examination of applicants for licensure as barbers and barber-stylists shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the board.

History.

1927, ch. 245, § 9, p. 389; I.C.A., § 53-609; am. 1974, ch. 13, § 42, p. 138; am. 1980, ch.

79, § 6, p. 161; am. 1990, ch. 163, § 5, p. 355; am. 2001, ch. 133, § 6, p. 473; am. 2008, ch. 110, § 2, p. 310.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 110, deleted the former first and last paragraphs, which

pertained to the board of barber examiners conducting examinations and conditions regarding failed examinations, respectively.

54-511. Issuance of certificate of registration and license. —

Whenever the provisions of this chapter have been complied with, the board shall issue a certificate of registration and license as a barber, barber-stylist or barber instructor.

History.

1927, ch. 245, § 10, p. 389; I.C.A., § 53-610; am. 1974, ch. 13, § 43, p. 138; am. 1990, ch.

163, § 6, p. 355; am. 2001, ch. 133, § 7, p. 473; am. 2007, ch. 195, § 4, p. 573.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 195, added “or barber instructor.”

54-512. Persons having practiced barbering or barber-styling in another state or country. —

(1) A person who is at least eighteen (18) years of age and of good moral character may be granted a license by the board to practice as a registered barber or barber-stylist upon application and payment of the required fee if such person has completed two (2) years of high school or its equivalent as determined by the board, and either:

- (a) Has a license or certificate of registration as a practicing barber or barber-stylist from another state or country, which has substantially the same requirements as required by this chapter; or
- (b) Who has been licensed as a barber or barber-stylist in another state or country for at least three (3) years immediately prior to making application in this state.

(2) No such license may be issued except upon authorization by the board. It is unlawful for any person to practice as a barber or barber-stylist without a license.

History.

1927, ch. 245, § 11, p. 389; am. 1929, ch. 261, § 6, p. 536; I.C.A., § 53-611; am. 1935, ch. 28, § 6, p. 44; am. 1961, ch. 204, § 6, p. 323; am. 1963, ch. 295, § 3, p. 777; am. 1974,

ch. 13, § 44, p. 138; am. 1980, ch. 79, § 7, p. 161; am. 1982, ch. 131, § 3, p. 374; am. 1990, ch. 163, § 7, p. 355; am. 1996, ch. 110, § 1, p. 412; am. 2001, ch. 133, § 8, p. 473; am. 2007, ch. 195, § 5, p. 573.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 195, redesignated the provisions of the section; in the introductory paragraph in subsection (1), deleted “and who” following “character,” and inserted “may be granted a license by the board to practice as a registered barber or barber-stylist upon application and payment

of the required fee if such person”; in subsection (1)(a), deleted “for licensing or registering barbers or barber-stylists” following “requirements”; and deleted the first sentence of the former last paragraph, which read: “May be granted a license by the board to practice as a registered barber or barber-stylist upon application and payment of the required fee.”

54-513. Performance of services to be limited to licensed shops and schools or colleges. —

It shall be unlawful to practice barbering or barber-styling in other than a properly licensed barbershop or barber school or college except that the holder of a license issued pursuant to this chapter may practice in a properly licensed cosmetology shop and except that a

licensed barber instructor may practice in a properly licensed cosmetology school.

History.

I.C., § 54-513, as added by 1980, ch. 79, § 8, p. 161; am. 1982, ch. 131, § 4, p. 374; am.

2003, ch. 54, § 3, p. 196; am. 2007, ch. 195, § 6, p. 573.

STATUTORY NOTES

Prior Laws.

Former § 54-513, which comprised S.L. 1927, ch. 245, § 12, p. 389; I.C.A., § 53-612, was repealed by S.L. 1974, ch. 13, § 1, p. 138.

“or barber-styling” and the last occurrence of “licensed,” substituted “the holder of a license issued pursuant to this chapter” for “a licensed barber or barber-stylist,” and twice substituted “practice” for “work.”

Amendments.

The 2007 amendment, by ch. 195, inserted

54-514. Display of license. — Every holder of a license shall display it in a publicly conspicuous place adjacent to or near the area where practice is conducted. A barbershop license must at all times during the term thereof be publicly displayed in the barbershop for which it is issued.

History.

1927, ch. 245, § 13, p. 389; I.C.A., § 53-613; am. 1957, ch. 232, § 4, p. 541; am. 2001, ch.

133, § 9, p. 473; am. 2007, ch. 195, § 7, p. 573.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 195, twice inserted “publicly” and substituted “the area

where practice is conducted” for “his work chair.”

54-515. Renewal and reinstatement of licenses. — All persons required to procure licenses from the board of barber examiners as a prerequisite for engaging in a trade, occupation or profession, or for the operation of a barber shop, must annually renew the same in accordance with the provisions of section 67-2614, Idaho Code. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

History.

1927, ch. 245, § 14, p. 389; I.C.A., § 53-614; am. 1961, ch. 204, § 7, p. 323; am. 1974, ch.

13, § 45, p. 138; am. 1980, ch. 79, § 9, p. 161; am. 2003, ch. 21, § 3, p. 77.

STATUTORY NOTES

Cross References.

Military exemption from fees, § 67-2602A.

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 12.

54-516. Refusal, revocation or suspension of license. — The board of barber examiners may either refuse to issue or renew or may suspend or revoke any license for any one (1) or combination of the following causes:

- (1) Conviction of a felony shown by a certified copy of the record of the court of conviction;
- (2) Gross malpractice or gross incompetency;
- (3) Failure to meet the sanitary and health requirements as promulgated for barbers under the provisions of this chapter;
- (4) Advertising by means of knowingly false or deceptive statements;
- (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs;
- (6) Immoral or unprofessional conduct; and
- (7) The commission of any of the offenses described in section 54-519, Idaho Code.
- (8) The violation of any of the provisions of this chapter, or rule adopted pursuant thereto.

History.

1927, ch. 245, § 15, p. 389; I.C.A., § 53-615; am. 1957, ch. 232, § 5, p. 541; am. 1963, ch. 295, § 4, p. 777; am. 1974, ch. 13, § 46, p.

138; am. 1975, ch. 84, § 6, p. 170; am. 1981, ch. 116, § 3, p. 197; am. 1990, ch. 163, § 8, p. 355; am. 2001, ch. 133, § 10, p. 473.

JUDICIAL DECISIONS

Employer-Employee Relationship.

This section gives the owner or operator of a barbershop the statutory obligation to supervise the work of barbers in the shop, insofar as it in any manner affects the public health, and such a duty is sufficient to create the

employer-employee relationship. *Byrd v. Employment Sec. Agency*, 86 Idaho 469, 388 P.2d 100 (1964).

Cited in: *Pearce v. Moffatt*, 60 Idaho 370, 92 P.2d 146 (1939).

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 12.

54-517. Hearings. — The board may neither refuse to issue nor refuse to renew, nor suspend, nor revoke any license, however, for any of these causes unless the person accused has been given at least twenty (20) days' notice in writing of the charge against him and a public hearing by the board.

Upon the hearing of any such proceeding, said board may administer oaths and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers.

Any district court, or any judge of the district court, either in term time or in vacation, upon application either of the accused or of the board may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before said board in any hearing relating to the refusal, suspension or revocation of a license.

History.

1927, ch. 245, § 16, p. 389; I.C.A., § 53-616;

am. 1974, ch. 13, § 47, p. 138; am. 2001, ch. 133, § 11, p. 473.

54-518. Fees. — The various fees to be paid by applicants for original registrations, original licenses, annual renewals, and examinations as required under this chapter shall be fixed by rules of the board in amounts not to exceed the following:

- (1) Original licenses and annual renewals thereof:

approved barber college within the state, original license/annual renewals.....	\$200.00
approved barber college located outside the state, original license/annual renewals.....	100.00
barbershop original license/annual renewals.....	50.00
barber, original license/annual renewals.....	50.00
barber-stylist, original license/annual renewals.....	50.00
barber instructor, original license/annual renewals.....	60.00
student registration (no renewal fees required).....	60.00
endorsement.....	80.00

(2) Examination/Reexamination conducted by a board approved examination administrator shall be that amount charged by the administrator and paid directly to the administrator.

Examination/Reexamination conducted by the board:

- | | |
|--------------------------------|----------|
| barber and barber-stylist..... | \$ 75.00 |
| barber instructor..... | 100.00 |

All fees shall be paid to the bureau of occupational licenses. The fee for reinstatement shall be as provided in section 67-2614, Idaho Code.

History.

I.C. § 54-518, as added by 1995, ch. 77, § 3, p. 207; am. 2001, ch. 133, § 12, p. 473; am.

2003, ch. 21, § 4, p. 77; am. 2003, ch. 54, § 4, p. 196; am. 2007, ch. 195, § 8, p. 573; am. 2008, ch. 110, § 3, p. 311.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-518 which comprised 1927, ch. 245, § 17, p. 389; am. 1929, ch. 261, § 7, p. 536; I.C.A., § 53-617; am. 1935, ch. 28, § 7, p. 44; am. 1957, ch. 232, § 6, p. 541; am. 1961, ch. 204, § 8, p. 323; am. 1963, ch. 295, § 5, p. 777; am. 1965, ch. 164, § 2, p. 317; 1969, ch. 464, § 3, p. 1304; am. 1974, ch. 13, § 48, p. 138; am. 1975, ch. 84, § 7, p. 170; am. 1976, ch. 166, § 5, p. 596; am. 1980, ch. 79, § 10, p. 161; am. 1982, ch. 131, § 5, p. 374; am. 1990, ch. 163, § 9, p. 355, was repealed by S.L. 1995, ch. 77, § 2, effective March 10, 1995.

Amendments.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 21, § 4, in the final paragraph deleted the former second

sentence, which read: "Fees shall not be prorated or refundable"; and deleted the former final sentence, which read: "All licenses expire on June 30."

The 2003 amendment, by ch. 54, § 4, deleted "temporary permit fee (no renewal fees required) 60.00" from subsection (1).

The 2007 amendment, by ch. 195, in subsection (1), substituted "barber instructor" for "teacher"; and in subsection (2), inserted "and barber-stylist," and substituted "barber instructor" for "teacher license examination."

The 2008 amendment, by ch. 110, in subsection (2), inserted "conducted by a board approved examination administrator shall be that amount charged by the administrator and paid directly to the administrator" and "Examination/Reexamination conducted by the board."

Effective Dates.

Section 4 of S.L. 1995, ch. 77 declared an emergency. Approved March 10, 1995.

54-519. Certain acts prohibited. — Each of the following shall be unlawful and punishable as a misdemeanor:

- (1) The violation of any of the provisions of this chapter;
- (2) Permitting any person in one's employ, supervision or control to practice as a barber, barber-stylist or barber instructor unless that person has complied with the provisions of this chapter, or to practice cosmetology unless that person has complied with the provisions of chapter 8, title 54, Idaho Code;
- (3) Obtaining or attempting to obtain a license for money other than the required fee, or any other thing of value, or by fraudulent misrepresentation;
- (4) Practicing or attempting to practice by fraudulent misrepresentations;
- (5) The willful failure to display a license as required by section 54-514, Idaho Code;
- (6) The use of any room or place for cutting or trimming the hair which is also used for residential or business purposes, except the sale of such commodities as are used in barbershops, unless a substantial partition of ceiling height separates the portion used for residential or business purposes; or
- (7) Maintaining or operating a barbershop or barber college unless licensed as herein provided.

History.

1927, ch. 245, § 18, p. 389; am. 1929, ch. 261, § 8, p. 536; I.C.A., § 53-618; am. 1980,

ch. 79, § 11, p. 161; 1990, ch. 163, § 10, p. 355; am. 2001, ch. 133, § 13, p. 473; am. 2007, ch. 195, § 9, p. 573.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none prescribed, § 18-317.

Amendments.

The 2007 amendment, by ch. 195, in subsection (2), inserted "or barber instructor," and substituted "has complied with the pro-

visions of this chapter" for "has a valid, unrevoked license as a barber, barber stylist or a temporary permit from the department" and "has complied with the provisions of chapter 8, title 54, Idaho Code" for "has a valid, unrevoked certificate of registration as a registered cosmetologist."

54-520. False affidavit as perjury. — The wilful making of any false statement as to a material matter in any oath or affidavit which is required by the provisions of this chapter is perjury and punishable as such.

History.

1927, ch. 245, § 19, p. 389; I.C.A., § 53-619.

STATUTORY NOTES

Cross References.

Penalty for perjury, § 18-5409.

54-521. Board of barber examiners — Powers and duties — Designation of persons to report to board. — There is hereby created, and established in the department of self-governing agencies, the board of

barber examiners. The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in the board's interest. In addition to the powers otherwise conferred by this chapter, it shall be the duty of the board:

(1) To conduct or approve examinations to ascertain the qualifications and fitness of applicants for licenses hereunder and to pass upon the qualifications of all applicants for licenses.

(2) To conduct hearings and proceedings in accordance with the provisions of chapter 52, title 67, Idaho Code, to revoke licenses issued under this chapter and to revoke such licenses subject to the provisions of this chapter.

(3) To designate what schools of barbering within and without the state are approved schools, and from time to time, to change such designations and to keep public records thereof.

(4) To prescribe rules in accordance with the provisions of chapter 52, title 67, Idaho Code, for a fair and wholly impartial method of examination of applicants for licenses hereunder and, subject to the provisions of chapter 52, title 67, Idaho Code, for conducting hearings for the revocation of licenses, defining the qualifications of an approved school of barbering and for the administration of this chapter in general.

Excepting the regulation of schools under section 54-507, Idaho Code, hereof, and the issuance of licenses under section 54-511, Idaho Code, none of the powers and duties specified in subsections (1) through (4) of this section, shall be exercised by the bureau except on the action of the board of barber examiners. When vacancies occur on the board, the governor shall appoint new members, but not more than a total of three (3) members, each of whom shall be a registered barber, and shall have been a resident of, and lawfully practicing barbering within the state of Idaho for a period of at least five (5) years next before his appointment, and who is neither directly nor indirectly in any way connected with or interested in the barber supply business nor in any institution offering instruction in barbering. In appointing the members of the board the governor shall give consideration to all nominations. The board and all assistants shall be compensated as provided by section 59-509(n), Idaho Code.

The regular term of office of a member of the board shall begin as of the first Monday of July of the year in which he is appointed and shall continue for three (3) years thereafter. A member appointed to fill a vacancy occasioned otherwise than by expiration of a term shall serve the unexpired term of his predecessor.

A vacancy in membership in the board shall occur, and be declared by the governor, whenever the regular term of a member expires, or whenever a member dies, resigns, or is found by the governor to be mentally or physically incapable of acting, or to be neglecting or refusing to act, or to cease to have the qualifications of a member, or to have acquired disqualifications of a member, or to have been absent without reasonable cause from two (2) successive meetings of the board.

The board of barber examiners shall select from its members a chairman and vice chairman who shall serve at the pleasure of the board.

The action and report in writing of the board so designated shall be sufficient authority upon which the bureau may act.

Whenever the board is satisfied that substantial justice has not been done, either in examination or in revocation of a license or otherwise, it may order a reexamination or rehearing of the matter.

History.

1927, ch. 245, § 20, p. 389; am. 1929, ch. 261, § 9, p. 536; I.C.A., § 53-620; am. 1935, ch. 28, § 8, p. 44; am. 1951, ch. 267, § 1, p. 566; am. 1961, ch. 204, § 9, p. 323; am. 1963, ch. 295, § 6, p. 777; am. 1969, ch. 464, § 4, p. 1304; am. 1974, ch. 13, § 49, p. 138; am. 1976,

ch. 166, § 6, p. 596; am. 1980, ch. 247, § 52, p. 582; am. 1982, ch. 131, § 6, p. 374; am. 1993, ch. 216, § 51, p. 587; am. 2000, ch. 469, § 123, p. 1450; am. 2001, ch. 133, § 14, p. 473; am. 2005, ch. 275, § 2, p. 846; am. 2007, ch. 195, § 10, p. 573; am. 2008, ch. 110, § 4, p. 311; am. 2010, ch. 257, § 3, p. 655.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies, § 67-2601 et seq.

Amendments.

The 2007 amendment, by ch. 195, in the introductory paragraph, rewrote the second sentence, which formerly read: “The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest (in this chapter referred to as the board) and in addition to the powers

herein elsewhere conferred, shall have the following powers and it shall be the duty of the board”; and in the second-to-last paragraph, deleted “and secretary” following “vice chairman.”

The 2008 amendment, by ch. 110, in subsection (1), inserted “or approve”; and updated the second section reference in the first paragraph following subsection (4).

The 2010 amendment, by ch. 257, in the first paragraph following subsection (4), substituted “section 59-509(n)” for “section 59-509(h)” in the last sentence.

54-522. Public record for licenses. — The board shall maintain a public record of all applications for licenses, the action of the board thereon, of all licenses issued and of all licenses revoked or forfeited with the reasons for such revocation or forfeiture and of all renewals.

History.

1927, ch. 245, § 21, p. 389; I.C.A., § 53-621;

am. 1974, ch. 13, § 50, p. 138; am. 2007, ch. 195, § 11, p. 573.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 195, substituted “shall maintain a public record” for

“shall keep in a book appropriate for that purpose a public record.”

54-523. Use of terminology limited — Barber poles. — Only a person licensed pursuant to the provisions of this chapter may:

(1) Hold himself out to the public, solicit business or advertise as a licensed barber or as operating a licensed barbershop;

(2) Use the title or designation “barber” or “barbershop” under circumstances that would create or tend to create the impression to members of the general public that the person is a licensed barber or is operating a licensed barbershop; or

(3) Place a barber pole in a location that would create or tend to create the impression to members of the general public that a business located near the barber pole is a barbershop unless the business is a licensed cosmetological establishment that is leasing space to or employing a licensed barber. As used in this subsection (3), “barber pole” means a red and

white striped vertical cylinder with a ball located on top of the cylinder or any object of a similar nature, regardless of its actual shape or coloring, that would create or tend to create the impression to members of the general public that a business located near the object is a barbershop.

History.

I.C., § 54-523, as added by 2006, ch. 411, § 1, p. 1242.

STATUTORY NOTES

Prior Laws.

Former § 54-523, which comprised S.L. 1927, ch. 245, § 22, p. 389; I.C.A., § 53-622, was repealed by S.L. 1974, ch. 13, § 1, p. 138.

54-524. Inspection. — Inspection of barbers and barbershops for the purpose of enforcing the provisions of this chapter shall be made by the bureau of occupational licenses. The board of barber examiners shall have authority to make reasonable rules for the administration of the provisions of this chapter and prescribe sanitary requirements for barbershops and barber schools, and the officers of said agency, or its agents, shall have authority to enter upon and to inspect any barbershop or barber school at any time during business hours. A copy of the sanitary requirements adopted by the board shall be furnished to the owner or manager of each barbershop and barber school, and such copy shall be posted in a conspicuous place in each barbershop or barber school.

History.

1927, ch. 245, § 23, p. 389; am. 1929, ch. 261, § 10, p. 536; I.C.A., § 53-623; am. 1957, ch. 232, § 7, p. 541; am. 1961, ch. 204, § 10, p. 323; am. 1963, ch. 295, § 7, p. 777; am. 1974,

ch. 13, § 51, p. 138; am. 1981, ch. 116, § 4, p. 197; am. 1982, ch. 131, § 7, p. 374; am. 1990, ch. 163, § 11, p. 355; am. 2007, ch. 195, § 12, p. 573.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2007 amendment, by ch. 195, in the section catchline, deleted “rules” from the end; in the first sentence, substituted “occu-

pational licenses” for “occupational licensing”; and in the third sentence, substituted “sanitary requirements” for “rules,” “to the owner or manager” for “by the said board to the owner and manager,” and the last occurrence of “each barbershop” for “such barber shop.”

JUDICIAL DECISIONS

Cited in: Gregersen v. Blume, 113 Idaho 220, 743 P.2d 88 (Ct. App. 1987).

54-525. Separability. — If any portion of this chapter is declared unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of the chapter which can be given effect without the invalid portion.

History.

1927, ch. 245, § 24, p. 389; I.C.A., § 53-624.

54-526. Short title. — This chapter may be cited as “The Idaho Barber Law.”

History.
1927, ch. 245, § 25, p. 389; I.C.A., § 53-625.

54-527. Licenses of teachers. [Repealed.]

STATUTORY NOTES

Compiler’s Notes.
This section, which comprised I.C.A., § 53-626, as added by 1935, ch. 28, § 9, p. 44; am.

2001, ch. 133, § 15, p. 473, was repealed by S.L. 2007, ch. 195, § 13. See § 54-502.

54-528. Qualifications of teachers. [Repealed.]

STATUTORY NOTES

Compiler’s Notes.
This section, which comprised I.C.A., § 53-627, as added by 1935, ch. 28, § 9, p. 44; am. 1980, ch. 79, § 12, p. 161; am. 1982, ch. 131,

§ 8, p. 374; am. 1995, ch. 225, § 1, p. 776; am. 2001, ch. 133, § 16, p. 437, was repealed by S.L. 2007, ch. 195, § 13. See § 54-506.

54-529. Requirements of students. [Repealed.]

STATUTORY NOTES

Compiler’s Notes.
This section, which comprised I.C.A., § 53-628, as added by 1935, ch. 28, § 9, p. 44; am.

1976, ch. 166, § 7, p. 596; am. 1982, ch. 131, § 9, p. 374, was repealed by S.L. 2007, ch. 195, § 13. See § 54-506.

54-530. Judicial review. — Any person who shall feel aggrieved by an action of the board in denying, suspending or revoking his license may seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.
I.C., § 54-530, as added by 1959, ch. 76, § 1, p. 175; am. 1974, ch. 13, § 52, p. 138; am.

1993, ch. 216, § 52, p. 587; am. 2001, ch. 133, § 17, p. 473.

STATUTORY NOTES

Effective Dates.
Section 194 of S.L. 1974, ch. 13 provided the

act should be in full force and effect on and after July 1, 1974.

CHAPTER 6

PODIATRISTS

SECTION.	SECTION.
54-601. Purposes of the act.	54-605. Powers and duties of state board of podiatry.
54-602. Podiatry defined.	54-606. State board of podiatry — Examination for licenses.
54-603. License a prerequisite to practice.	54-607. Licenses — Issuance — Renewals —
54-604. Establishment of state board of podiatry.	

SECTION.

- Display.
 54-608. Grounds for suspension, denial, refusal to renew or revocation of license.
 54-609. Unprofessional or dishonorable conduct justifying suspension or revocation of license defined.
 54-610. Proceedings for suspension or revocation of license.
 54-611. Judicial review of proceedings of the

SECTION.

- board revoking or suspending license.
 54-612. Examination not required of licensed persons.
 54-613. License by endorsement.
 54-614. Practice without a license a misdemeanor.
 54-615. Moneys deposited in the state treasury.
 54-616. [Repealed.]

54-601. Purposes of the act. — The practice of podiatry in the state of Idaho is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the profession of podiatry merit and receive the confidence of the public, and to that end that only qualified persons be permitted to practice podiatry in the state of Idaho. This act shall be liberally construed to carry out these objects and purposes.

History.

1957, ch. 143, § 1, p. 235; am. 1976, ch. 361, § 1, p. 1184.

STATUTORY NOTES**Cross References.**

Incorporation of professional service corporations, § 30-1301 et seq.

Prior Laws.

Former chapter 6 of title 54, which comprised S.L. 1925, ch. 148, §§ 1 to 13, p. 259; am. 1927, ch. 243, § 11, p. 369; I.C.A., §§ 53-801 to 53-813; am. 1941, ch. 47, §§ 1 to 3, p.

100; am. 1949, ch. 75, §§ 1 to 3, p. 129, was repealed by S.L. 1957, ch. 143, § 17 and the present chapter substituted in its place.

Compiler's Notes.

The words "this act" refer to S.L. 1957, ch. 143, which is compiled as §§ 54-601 to 54-615.

JUDICIAL DECISIONS**DECISIONS UNDER PRIOR LAW****ANALYSIS**

Functions of board upheld.
 Nature of chiroprody.

Functions of Board Upheld.

Powers of numerous administrative and executive officials and boards exercising so-called quasi-judicial functions in determining facts and applying standards have been upheld. *State v. Kouni*, 58 Idaho 493, 76 P.2d 917 (1938).

Nature of Chiroprody.

Practice of chiroprody is not practice of medicine and surgery, but is an independent calling, and it may be regulated, but not prohibited, by legislature. *State v. Armstrong*, 38 Idaho 493, 225 P. 491 (1938).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 43.

A.L.R. — Podiatry or chiroprody statutes:

Validity, construction, and application. 45 A.L.R.4th 888.

54-602. Podiatry defined. — (1) Podiatry shall, for the purpose of this chapter, mean the diagnosis and mechanical, electrical, medical, physical and surgical treatment of ailments of the human foot and leg, and the casting of feet for the purpose of preparing or prescribing corrective appliances, prosthetics, and/or the making of custom shoes for corrective treatment; provided, however, that the casting of feet for preparing corrective appliances, prosthetics and/or custom shoes may be permitted on the prescription of a duly licensed person in the healing arts in this state. Podiatrists shall be limited in their practice to the human foot and leg. Surgical treatment, as herein used, shall mean the surgical treatment of the foot and ankle and those soft tissue structures below the knee governing the function of the foot and ankle, but shall not include the amputation of the leg, surgery of the knee joint, surgery of the bony structures proximal to the distal half of the tibia, or the administration or monitoring of general anesthesia.

(2) Advanced surgical procedures, as determined by the state board of podiatry, shall be performed in a licensed hospital or certified ambulatory surgical center accredited by the joint commission on accreditation of healthcare organizations or the accreditation association for ambulatory health care where a peer review system is in place.

(3) A podiatrist may administer narcotics and medications in the treatment of ailments of the human foot and leg in the same manner as a physician and surgeon licensed to practice under chapter 18, title 54, Idaho Code.

(4) It is not the intent of this section, and nothing herein shall be so construed, to prohibit the sale of noncustom built shoes that are commonly sold by merchants in commercial establishments.

(5) A podiatrist is defined as a natural person who practices podiatry and who within the scope of this chapter is a physician and surgeon of the foot and ankle, and shall be referred to as a podiatric physician and surgeon; provided, further, that nothing within this chapter shall prohibit any physician or surgeon, registered and licensed as such and authorized to practice under the laws of the state of Idaho, or any physician or surgeon of the United States army, navy or public health service when in actual performance of his duties, from practicing medicine and surgery.

History.

1957, ch. 143, § 2, p. 235; am. 1976, ch. 361,
§ 2, p. 1184; am. 2005, ch. 306, § 1, p. 955.

STATUTORY NOTES

Compiler's Notes.

The joint commission on accreditation of healthcare organizations, referred to in subsection (2), was renamed as the joint commission in 2007. See <http://www.jointcommission.org>.

For more on the accreditation association for ambulatory health care, see <http://www.aaahc.org>.

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 4, 5, 8.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 1.

A.L.R. — Podiatry or chiropody statutes: validity, construction, and application. 45

A.L.R.4th 888.

54-603. License a prerequisite to practice. — It is unlawful for any person to practice podiatry, as defined by this act, unless he shall first obtain a license so to do as provided in this act.

History.

1957, ch. 143, § 3, p. 235; am. 1976, ch. 361, § 3, p. 1184.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1957, ch.

143, which is compiled as §§ 54-601 to 54-615.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

54-604. Establishment of state board of podiatry. — There is hereby established in the department of self-governing agencies a state board of podiatry to be composed of five (5) members to be appointed by the governor in the manner hereinafter set forth. Four (4) of said members shall be podiatrists, duly licensed under the laws of the state of Idaho, and who shall have been continuously engaged in the practice of podiatry for a period of not less than five (5) years prior to his appointment. The fifth member of the board shall be a layman, a resident of the state of Idaho for a period of not less than five (5) years prior to his appointment. With reference to the first board, the four (4) podiatrists shall be appointed for terms of one (1), two (2), three (3) and four (4) years, respectively. The lay board member shall be appointed for a term of three (3) years. Thereafter, all appointments to the board shall be made for terms of four (4) years. Vacancies upon the board, occurring for any reason, shall be filled by the governor. The governor in making appointments shall give consideration to but shall not be bound by the recommendations received from the Idaho Podiatric Medical Association.

Within thirty (30) days from the appointment of the board by the governor, the board shall organize itself, select a chairman, a vice chairman and secretary. The chairman and the secretary shall be podiatrists. The board shall meet annually for the purpose of conducting examinations and transacting any other business which may lawfully come before it. The board may meet in special session at the call of the chairman, or at the call of not less than two-thirds (2/3) of the membership of the board. The members of the board shall each be compensated as provided by section 59-509(m), Idaho Code.

Examinations of applicants may be conducted by the board, or by designated representatives of the board.

A quorum will consist of at least three (3) members of the board. The chairman, or person acting as such, will vote only in the case of a tie.

History.

1957, ch. 143, § 4, p. 235; am. 1965, ch. 201, § 1, p. 446; am. 1969, ch. 464, § 5, p. 1304; am. 1974, ch. 13, § 53, p. 138; am. 1976, ch.

361, § 4, p. 1184; am. 1980, ch. 247, § 53, p. 582; am. 1990, ch. 36, § 1, p. 53; am. 1997, ch. 27, § 1, p. 43; am. 2000, ch. 41, § 1, p. 81; am. 2008, ch. 16, § 1, p. 22.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

Amendments.

The 2008 amendment, by ch. 16, substituted “section 59-509(m)” for “section 59-509(g)” at the end of the second paragraph.

Compiler’s Notes.

For more on the Idaho podiatric medical association, see <http://podiatryinidaho.org>.

Effective Dates.

Section 2 of S.L. 2000, ch. 41 provided that the act shall be in full force and effect on and after July 1, 2000.

54-605. Powers and duties of state board of podiatry. — The state board of podiatry, herein referred to as the board, shall have the following powers:

1. To conduct examinations to ascertain the qualifications and fitness of applicants to practice podiatry; to pass upon the qualifications of applicants for licenses by endorsement; and to establish, by rule, the specific examinations to be required of each applicant for licensure and the dates, times and locations of those examinations.

2. To prescribe rules defining for the podiatrists what shall constitute a reputable school, college or university, or department of a university or other institution in good standing, and to determine the reputability of good standing of a school, college or university, or department of a university or other institution, by reference to compliance with such rules.

3. To establish a standard of preliminary education deemed requisite for admission to a school, college or university teaching podiatry, and to require satisfactory proof of the enforcement of such standards by schools, colleges and universities.

4. To prescribe rules for a fair and wholly impartial method of examination of candidates to practice podiatry.

5. To conduct hearings and proceedings to suspend or revoke licenses of persons practicing podiatry, and to suspend or revoke such licenses for due cause.

6. To make and promulgate rules when required in this act to be administered.

7. To make and promulgate rules prescribing the standards for the ethical practice of podiatry in the state.

8. To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

9. To make and promulgate rules defining and requiring a podiatric residency as a condition of licensure.

History.

1957, ch. 143, § 5, p. 235; am. 1974, ch. 13, § 54, p. 138; am. 1987, ch. 119, § 1, p. 232; am. 1997, ch. 27, § 2, p. 43.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

to S.L. 1957, ch. 143, which is compiled as §§ 54-601 to 54-615.

Compiler's Notes.

The words "this act" in subsection (6) refer

54-606. State board of podiatry — Examination for licenses. —

Every person, except as hereinafter provided, desiring to commence the practice of podiatry within this state, shall make written application to the state board of podiatry, upon forms to be prescribed and furnished by the board, for a license so to do. Such applications shall be accompanied by a fee as established by board rule not to exceed four hundred dollars (\$400). Each applicant shall be at least twenty-one (21) years of age, of good moral character, have completed an accredited podiatric residency, as defined by board rule, and be a graduate of some reputable school of podiatry accredited by the board. A reputable school of podiatry for the purposes herein shall mean a school of podiatry requiring for graduation the graduation from an accredited high school, credits granted for at least two (2) full years of general college study in a college or university of recognized standing, and four (4) full years of study in such school of podiatry or its equivalent.

Except as herein otherwise provided, each applicant shall be examined by the board to determine his knowledge of the subjects taught in reputable schools of podiatry, and which examinations shall include the following subjects: Anatomy, histology, pathology, bacteriology, physiology, surgery, roentgenology, podiatric medicine, chemistry, dermatology, materia medica, diagnosis, therapeutics, clinical and orthopedic podiatry, limited in scope to podiatry. Additional subjects may be prescribed from time to time by the board. Examinations may be in one (1) or more of the following formats: written, oral and practical. A candidate for licensure may be required to take and pass one (1) or more examinations as set forth in board rule.

The board shall also collect a separate fee from all applicants for examination. The examination fee shall not exceed six hundred dollars (\$600), together with an additional twenty-five dollar (\$25.00) administration fee.

No applicant shall be granted a license who shall fail to obtain a satisfactory score as established by the board on all the subjects examined upon. Should any applicant fail on such examination and by reason thereof be refused a license, he shall be entitled within six (6) months of such refusal to a reexamination upon payment of an additional fee as established by board rule not to exceed four hundred dollars (\$400) to the board; provided, however, that two (2) such reexaminations shall exhaust his privilege under his original application.

History.

1957, ch. 143, § 6, p. 235; am. 1969, ch. 464, § 6, p. 1304; am. 1976, ch. 361, § 5, p. 1184; am. 1982, ch. 141, § 1, p. 397; am. 1987, ch.

119, § 2, p. 232; am. 1990, ch. 36, § 2, p. 53; am. 1995, ch. 27, § 1, p. 41; am. 1997, ch. 27, § 3, p. 43; am. 2003, ch. 72, § 1, p. 237.

54-607. Licenses — Issuance — Renewals — Display. — If the applicant shall pass a satisfactory examination, and shall show that he is a person of good moral character and he possesses the qualifications required by this chapter to entitle him to a license as a podiatrist, he shall be entitled to a license authorizing him to practice podiatry within the state of Idaho. Said successful applicant shall be issued his license by the board upon payment of the original license fee which shall be the same fee as required for renewal.

All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. An annual renewal license fee established by board rule shall not exceed six hundred fifty dollars (\$650) for podiatrists. Payment of fees herein provided, and satisfactory evidence of having complied with continued education requirements as established by board rules are a condition precedent for issuance of a license.

Every person to whom a license is granted shall have such license displayed continuously in a conspicuous part of his office wherein his practice of podiatry is conducted.

The board shall keep on file a register of all applicants for license, rejected applicants, and licensees.

The fee for reinstatement of a license shall be as provided in section 67-2614, Idaho Code. All fees shall be paid to the bureau of occupational licenses.

History.

1957, ch. 143, § 7, p. 235; am. 1965, ch. 164, § 3, p. 317; am. 1969, ch. 464, § 7, p. 1304; am. 1974, ch. 13, § 55, p. 138; am. 1976, ch. 361, § 6, p. 1184; am. 1982, ch. 141, § 2, p.

397; am. 1987, ch. 119, § 3, p. 232; am. 1997, ch. 27, § 4, p. 43; am. 1999, ch. 153, § 1, p. 427; am. 2001, ch. 26, § 1, p. 31; am. 2003, ch. 21, § 5, p. 77; am. 2009, ch. 94, § 1, p. 280.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

tuted “six hundred fifty dollars (\$650)” for “four hundred dollars (\$400)” in the second paragraph.

Amendments.

The 2009 amendment, by ch. 94, substi-

54-608. Grounds for suspension, denial, refusal to renew or revocation of license. — No license may be issued, and a license previously issued may be suspended or revoked, if the person applying, or the person licensed is:

1. Found guilty by a court of competent jurisdiction of a felony or any offense involving moral turpitude;
2. Found by the board to be a repeated and excessive abuser of any drug, including alcohol, or any controlled substance;

3. Found by the board to be in violation of any provision of this act or the rules promulgated pursuant thereto;
4. Found by the board to have used fraud or deception in the procuring of any license;
5. Found by the board to have had any action, including denial of a license or the voluntary surrender of or voluntary limitation on a license, taken against the licensee by any peer review body, any health care institution, any professional medical society or association or any court, law enforcement or governmental agency; or
6. Found by the board to have been unethical, unprofessional or dishonorable in the practice of healing the sick.

History.

1957, ch. 143, § 8, p. 235; am. 1976, ch. 361, § 7, p. 1184; am. 1993, ch. 216, § 53, p. 587; am. 1997, ch. 27, § 5, p. 43.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" in subsection (3) refer to S.L. 1957, ch. 143, which is compiled as §§ 54-601 to 54-615.

54-609. Unprofessional or dishonorable conduct justifying suspension or revocation of license defined. — It shall constitute unprofessional or dishonorable conduct justifying suspension or revocation of a license for any person holding a license to practice podiatry to:

1. Offer, give or promise, either directly or indirectly, any gift in return for the procurement of a patient or patients for podiatric treatment.
2. Request, list, accept or receive any rebates or commission for prescribing or recommending any footwear, drug, medicine, or any other article, to his patients.
3. Prescribe, dispense or pretend to use, in treating any patient, any secret remedial agent, or manifest or promote its use in any way, or guarantee or imply to guarantee any treatment, therapy or remedy whatsoever.
4. Use any form of advertising that is false, misleading or deceptive.
5. Use any title other than that of podiatrist or doctor of podiatric medicine; provided the term "foot specialist" or "physician and surgeon of the feet" may be used as explanatory terms of the title podiatrist but not alone or as a substitute therefor.
6. Employ a solicitor or solicitors to obtain business.
7. Publish or use untruthful or improbable statements with the intent of deceiving or defrauding the public or any patient.
8. Violate any rule promulgated by the board which prescribes the standards for the ethical practice of podiatry in this state.

History.

1957, ch. 143, § 9, p. 235; am. 1976, ch. 361, § 8, p. 1184; am. 1982, ch. 141, § 3, p. 397; am. 1993, ch. 314, § 1, p. 1165; am. 1997, ch. 27, § 6, p. 43.

54-610. Proceedings for suspension or revocation of license. — (1) Proceedings for the suspension or revocation of a license shall be

conducted in accordance with the provisions of chapter 52, title 67, Idaho Code. Such proceedings may be initiated upon the information and accusation of any person. All accusations must be made in writing, signed and verified by the person familiar with the facts therein charged, and three (3) copies thereof must be filed with the board. Upon receiving the accusation the board shall, either as a board or through its secretary, make a preliminary examination of all the facts and circumstances connected with such charge. Such preliminary examination and papers in connection therewith shall not constitute public records. If the accusation be deemed insufficient by the board, no further action shall be taken. Should the board deem the complaint set forth in the accusation sufficient to require formal action, the board shall make an order setting the same for hearing at a specified time and place. The board shall cause a copy of such order and a copy of the verified accusation to be served upon the licensed person accused not less than twenty (20) days prior to the day appointed in the order for said hearing. The board, the person accusing and the licensed person accused may be represented by counsel at such hearing.

(2) The board shall have the power to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire, relevant to any hearing before it of any matter which it has authority to investigate, and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of books, records or papers, directed to the sheriff of any county of the state of Idaho where such witness resides or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case. Fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, and shall be paid from any funds in the state treasury in the same manner as other expenses of the board are paid. In the event of disobedience to or neglect of any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county in this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused shall have the same right of subpoena upon making application to the board therefor.

(3) If the board shall find that the licensed person accused has violated any of the provisions of this act, the board may enter an order suspending his license for not less than thirty (30) days nor more than two (2) years. A suspended license may not be reinstated during the term of the suspension except upon order of a district court reversing the board, or upon order of the board itself after hearing new or additional evidence not available at the original proceedings. A revoked license may not be reinstated except upon order of a district court reversing the board.

History. § 56, p. 138; am. 1976, ch. 361, § 9, p. 1184;
1957, ch. 143, § 10, p. 235; am. 1974, ch. 13, am. 1993, ch. 216, § 54, p. 587.

STATUTORY NOTES

Compiler's Notes. to S.L. 1957, ch. 143, which is compiled as
The words "this act" in subsection (3) refer §§ 54-601 to 54-615.

54-611. Judicial review of proceedings of the board revoking or suspending license. — Any person whose license shall have been revoked or suspended by the board shall have the right to judicial review of the board's action in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.
1957, ch. 143, § 11, p. 235; am. 1974, ch. 13,
§ 57, p. 138; am. 1993, ch. 216, § 55, p. 587.

54-612. Examination not required of licensed persons. — Any person now licensed in the state to practice podiatry shall be entitled to a renewal of his license, without examination, by applying to the board for a renewal of the same, submitting satisfactory evidence of having met the continued education requirements and tendering the renewal license fee.

History. 138; am. 1976, ch. 361, § 10, p. 1184; am.
1957, ch. 143, § 12, p. 235; am. 1969, ch. 1982, ch. 141, § 4, p. 397.
464, § 8, p. 1304; am. 1974, ch. 13, § 58, p.

54-613. License by endorsement. — The board may issue a license to an applicant by endorsement where the applicant has passed an examination for and is currently licensed to practice podiatry in another state. The applicant must satisfy in all other respects the requirements for licensure in this act and any rules adopted by the board. All applications for licensure by endorsement must be accompanied by an application fee as established by board rule not to exceed four hundred dollars (\$400).

History. 1184; am. 1990, ch. 36, § 3, p. 53; am. 1997,
1957, ch. 143, § 13, p. 235; am. 1969, ch. ch. 27, § 7, p. 43; am. 2001, ch. 26, § 2, p. 31;
464, § 9, p. 1304; am. 1976, ch. 361, § 11, p. am. 2003, ch. 72, § 2, p. 237.

STATUTORY NOTES

Compiler's Notes. 143, which is compiled as §§ 54-601 to 54-
The words "this act" refer to S.L. 1957, ch. 615.

54-614. Practice without a license a misdemeanor. — Any person who practices or attempts to practice podiatry, publicly advertises as a podiatrist, or who uses the title chiropodist, podiatrist, or any other word, title or abbreviation calculated to induce belief that he is engaged in the practice of podiatry, or who holds himself out to the public as diagnosing the ailments of or treating in any manner the human foot by medical, physical

or surgical methods, without a license as provided in this act, shall be deemed guilty of a misdemeanor.

History.

1957, ch. 143, § 14, p. 235; am. 1976, ch. 361, § 12, p. 1184.

STATUTORY NOTES

Cross References.

Punishment for misdemeanor where punishment not prescribed, § 18-113.

143, which is compiled as §§ 54-601 to 54-615.

Compiler's Notes.

The words "this act" refer to S.L. 1957, ch.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 12.

54-615. Moneys deposited in the state treasury. — All moneys of any kind collected under the provisions of this act shall be immediately remitted to the bureau of occupational licenses for deposit in the state treasury to the credit of the occupational licenses fund [account].

History.

1957, ch. 143, § 15, p. 235; am. 1974, ch. 13, § 59, p. 138.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Compiler's Notes.

The words "this act" refer to S.L. 1957, ch. 143, which is compiled as §§ 54-601 to 54-615.

The bracketed insertion was added by the compiler to correct the name of the referenced account. See § 67-2605.

Section 16 of S.L. 1957, ch. 143 read: "If any

clause, section or provision of this act shall be found unconstitutional, the remainder of this act shall remain in full force and effect."

Effective Dates.

Section 18 of S.L. 1957, ch. 143 declared an emergency. Approved March 7, 1957.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

54-616. Podiatrist's assistant. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised (I.C., § 54-

616, as added by 1976, ch. 361, § 13, p. 1184) was repealed by S.L. 1982, ch. 141, § 5.

CHAPTER 7

CHIROPRACTIC PRACTICE ACT

SECTION.

- 54-701. Short title.
- 54-702. Legislative intent.
- 54-703. Definitions.
- 54-704. Chiropractic practice.
- 54-705. Exceptions — Prohibited practices — Negligence established.
- 54-706. State board of chiropractic physicians created.
- 54-707. Powers and duties.
- 54-708. Board to issue licenses — Renewal and reinstatement.

SECTION.

- 54-709. Licensure by written examination.
- 54-710. Licensure by endorsement.
- 54-711. Temporary practice, registration and permit.
- 54-712. Discipline by the board — Grounds.
- 54-713. Penalties and reinstatement.
- 54-714. Observation of public health law.
- 54-715. Peer review committee.

54-701. Short title. — This act may be cited as the “Chiropractic Practice Act.”

History.

I.C., § 54-701, as added by 1980, ch. 334, § 2, p. 862.

STATUTORY NOTES

Prior Laws.

Former §§ 54-701 to 54-713, which comprised 1919, ch. 167, §§ 1 to 12, p. 535; C.S., §§ 2141 to 2153; am. 1927, ch. 243, § 3, p. 369; I.C.A., §§ 53-901 to 53-913; am. 1937, ch. 169, §§ 1 to 6, p. 275; am. 1965, ch. 201, § 2, p. 446; am. 1969, ch. 464, §§ 10 to 12, p. 1304; am. 1973, ch. 127, § 1, p. 244; am. 1974, ch. 13, §§ 60 to 67, p. 138; am. 1975, ch. 26, § 1, p. 41; am. 1976, ch. 166, §§ 8 to 11, p. 596, was repealed by S.L. 1980, ch. 334, § 1.

Compiler's Notes.

The words “this act” refer to S.L. 1980, ch.

334, which is compiled as §§ 54-701 to 54-712 and 54-714. The reference probably should be to “this chapter,” being chapter 7, title 54, Idaho Code.

Section 4 of S.L. 1980, ch. 334 read: “Nothing in this act shall be construed to invalidate the license of any person holding a valid, unrevoked and unsuspended license to practice chiropractic in this state on the effective date of this act. The rules and regulations of the board in effect on the effective date of this act shall continue in full force and effect until the board has adopted supplemental rules and regulations pursuant to this act.”

RESEARCH REFERENCES

A.L.R. — Chiropractor's liability for failure to refer patient to medical practitioner. 58 A.L.R.3d 590.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs. 8 A.L.R.4th 1056.

Scope of practice of chiropractic. 16 A.L.R.4th 58.

Conduct of physician's or other healer in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Liability of chiropractors and other drugless practitioners for medical malpractice. 77 A.L.R.4th 273.

54-702. Legislative intent. — Recognizing that the practice of chiropractic is a privilege granted by the state of Idaho and is not a natural right of individuals, the purpose of this chapter is to insure the public health, safety and welfare in the state of Idaho by the licensure and regulation of chiropractic physicians and the exclusion of unlicensed persons from the practice of chiropractic.

History.

I.C., § 54-702, as added by 1980, ch. 334,
§ 2, p. 862.

STATUTORY NOTES**Prior Laws.**

Former § 54-702 was repealed. See Prior
Laws, § 54-701.

JUDICIAL DECISIONS

Cited in: Sprague v. Caldwell Transp., Inc.,
116 Idaho 720, 779 P.2d 395 (1989).

54-703. Definitions. — As used in this chapter, the terms defined in this section shall have the following meaning, unless the context clearly indicates another meaning:

(1) The “practice of chiropractic” means:

(a) To investigate, examine, and diagnose for any human disease, ailment, injury, infirmity, deformity, or other condition; and

(b) To apply principles or techniques of chiropractic practice as set forth in section 54-704, Idaho Code, in the prevention or treatment of any of the conditions listed in subsection (a) of this section; or

(c) To offer, undertake, attempt to do or hold oneself out as able to do any of the acts prescribed in subsections (a) and (b) of this section.

(2) “Board” means the state board of chiropractic physicians.

(3) “Physician” means any person who holds a license to practice chiropractic; provided further, that others authorized by law to use the term “physician” shall not be considered physicians for the purpose of this chapter.

(4) “License to practice chiropractic” means a license issued by the board to a person who was graduated from an acceptable school of chiropractic and who has fulfilled the licensure requirements of this chapter.

(5) The word “person,” the word “he,” and the word “his,” means a natural person.

(6) “Acceptable school of chiropractic” means any school of chiropractic which meets the standards or requirements of a national chiropractic school accrediting organization acceptable to the board, or which has status as a candidate for accreditation before such organization.

History.

I.C., § 54-703, as added by 1980, ch. 334,
§ 2, p. 862.

STATUTORY NOTES**Prior Laws.**

Former § 54-703 was repealed. See Prior
Laws, § 54-701.

54-704. Chiropractic practice. — Chiropractic practice and procedures which may be employed by physicians are as follows:

(1) The system of specific adjustment or manipulation of the articulations and tissues of the body; the investigation, examination and clinical diagnosis of conditions of the human body and the treatment of the human body by the application of manipulative, manual, mechanical, physiotherapeutic or clinical nutritional methods and may include the use of diagnostic X-rays.

(a) "Adjustment" means the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point on the anatomy for the express purpose of creating a desired angular movement in skeletal joint structures in order to eliminate or decrease interference with neural transmission and correct or attempt to correct subluxation complex; "chiropractic adjustment" utilizes, as appropriate, short lever force, high velocity force, short amplitude force, or specific line-of-correction force to achieve the desired angular movement, as well as low force neuromuscular, neurovascular, neuro-cranial, or neuro-lymphatic reflex technique procedures.

(b) "Manipulation" means an application of a resistive movement by applying a nonspecific force without the use of a thrust, that is directed into a region and not into a focal point of the anatomy for the general purpose of restoring movement and reducing fixation.

(c) "Massage therapy," also called massology, means the systematic manual or mechanical mobilization of the soft tissue of the body by such movements as rubbing, kneading, pressing, rolling, slapping and tapping, for the purpose of promoting circulation of the blood and lymph, relaxation of muscles, release from pain, restoration of metabolic balance, and the other benefits both physical and mental.

(2) Nothing herein contained shall allow any physician to:

(a) Perform surgical operations or practice obstetrics;

(b) Direct or suggest to the patient that such patient shall use a substance which, under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (i) "Caution: Federal Law Prohibits Dispensing Without Prescription"; or (ii) "Caution: Federal Law Restricts This Drug To Use By or On The Order Of A Licensed Veterinarian"; or (iii) a product which is required by any applicable federal or state law regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(3) Chiropractic practice, as herein defined is hereby declared not to be the practice of medicine within the meaning of the laws of the state of Idaho defining the same, and physicians licensed pursuant to this chapter shall not be subject to the provisions of chapter 18, title 54, Idaho Code, nor liable to any prosecution thereunder, when acting within the scope of practice as defined in this chapter.

History.

I.C., § 54-704, as added by 1980, ch. 334,
§ 2, p. 862; am. 1993, ch. 157, § 1, p. 401.

STATUTORY NOTES

Prior Laws.

Former § 54-704 was repealed. See Prior Laws, § 54-701.

54-705. Exceptions — Prohibited practices — Negligence established. — (1) Under the circumstances described and, subject in each case to the limitations stated, the following persons, though not holding a license to practice chiropractic in this state, may engage in activities included in the practice of chiropractic:

- (a) A person licensed by this state pursuant to chapter 18, title 54, Idaho Code;
- (b) A chiropractic assistant as shall be defined and regulated by the board, administering a procedure set forth in section 54-704, Idaho Code, but not including the adjustment or manipulation of articulations of the body, as specifically directed by a chiropractic physician as long as such directions are within the scope of chiropractic practice;
- (c) A person rendering aid in an emergency, for which no fee for the services is contemplated, charged or received;
- (d) A person residing in another state or country and authorized to practice chiropractic there, who is called in consultation by a person licensed in this state to practice chiropractic, or who for the purpose of furthering chiropractic education is invited into this state to conduct a lecture, clinic or demonstration, while engaged in activities in connection with the consultation, lecture, clinic or demonstration, so long as he does not open an office or appoint a place to meet patients or receive calls in this state;
- (e) A person authorized to practice chiropractic in another state or country rendering chiropractic care in a time of disaster or while caring for an ill or injured person while at the scene of an emergency and while continuing to care for such person;
- (f) Nothing in this chapter shall be construed as preventing or restricting the practice, services or activities or requiring licensure pursuant to the provisions of this chapter, of any person licensed or registered in this state by any other law, from engaging in any health care profession or occupation for which such person is licensed or registered;
- (g) A medical officer of the armed forces of the United States, of the United States public health service, or of the veterans administration, while engaged in the performance of his official duties;
- (h) A person administering a remedy, diagnostic procedure or advice as specifically directed by a physician;
- (i) A person administering a family remedy to a member of the family;
- (j) A person authorized or licensed by this state to engage in activities which may involve the practice of medicine;
- (k) A person who administers treatment or provides advice regarding the human body and its functions that:
 - (i) Does not use legend drugs or prescription drugs in such practice;
 - (ii) Uses natural elements such as air, heat, water and light;

- (iii) Only uses class I or class II nonprescription, approved, medical devices as defined in section 513 of the federal food, drug and cosmetic act;
 - (iv) Only uses vitamins, minerals, herbs, natural food products and their extracts, and nutritional supplements; and who
 - (v) Does not perform surgery;
 - (vi) Requires each person receiving services to sign a declaration of informed consent which includes an overview of the health care provider's education which states that the health care provider is not an "M.D." or "D.O." and is not licensed under the provisions of this chapter;
 - (l) Any person who practices massage therapy as defined in section 54-704(1)(c), Idaho Code;
 - (m) A chiropractic intern, as defined and regulated by the board, who is registered with the board to practice chiropractic under the direct supervision of a licensed chiropractic physician pursuant to a preceptor program adopted and developed by the rules of the board.
- (2) Except as provided in subsection (1) of this section, it is unlawful for any person to practice chiropractic in this state without a license and, upon conviction thereof, shall be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000), or imprisoned for not less than six (6) months nor more than one (1) year, or by both such fine and imprisonment.
- (3) It is unlawful for any person to assume or use the title or designation "chiropractor," "chiropractic physician," "doctor of chiropractic," the initials "D.C.," or any word, title or abbreviation thereof calculated to induce the belief that he is engaged in the practice of chiropractic or to indicate to the public that such person is licensed to practice chiropractic pursuant to this chapter unless such person is so licensed, and upon conviction thereof, such person shall be fined not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000), or imprisoned for not less than six (6) months nor more than one (1) year, or by both such fine and imprisonment.
- (4) When a person has been a recipient of services constituting the unlawful practice of chiropractic, whether or not he knew the rendition of the services was unlawful, proof of the rendition of unlawful services to the recipient, in an action against the provider of such services for damages allegedly caused by the services, constitutes prima facie evidence of negligence, shifting the burden of proof to such provider of unlawful services. The following damages in addition to any other remedies provided by law may be recovered in such an action:
- (a) Amount of any fees paid for the unlawful services; and
 - (b) Reasonable attorney's fees and court costs.
- (5) The board shall refer all violations made known to it to an appropriate prosecuting attorney. The board shall render assistance to a prosecuting attorney in the prosecution of a case pursuant to this section.

History.

I.C., § 54-705, as added by 1980, ch. 334, § 2, p. 862; am. 1987, ch. 144; § 1, p. 286; am.

1993, ch. 157, § 2, p. 401; am. 2001, ch. 80, § 1, p. 201; am. 2003, ch. 277, § 1, p. 741.

STATUTORY NOTES

Prior Laws. Former § 54-705 was repealed. See Prior Laws, § 54-701. cosmetic act, referred to in paragraph (1)(k)(iii), is codified as 21 USCS § 360c.

Federal References. Section 513 of the federal food, drug and

54-706. State board of chiropractic physicians created. —

(1) There is hereby established in the department of self-governing agencies a state board of chiropractic physicians to be composed of five (5) members. The members of the board shall be appointed by the governor for a term of three (3) years. The governor may consider recommendations for appointment to the board from any chiropractic association or any individual residing in this state. No person may be appointed for more than two (2) consecutive terms.

(2) The board shall consist of four (4) physicians who are licensed to practice chiropractic in this state, and each of whom shall have been engaged continuously in the practice of chiropractic within the state of Idaho for a period of not less than three (3) years prior to his appointment.

(3) The governor shall appoint a representative of the public as one (1) member of the board who shall be designated as the public member. The public member of the board shall be a resident of the state of Idaho who has attained the age of twenty-one (21) years, and shall not be nor shall ever have been a physician, the spouse of a physician, a person licensed under the laws of any state to practice a healing art, or a person who has or has had a material financial interest in providing health care services.

(4) The board shall elect a chairman from its membership. The members of the board, except for state employees, shall be compensated as provided by section 59-509(n), Idaho Code. Three (3) members of the board shall constitute a quorum, and the board may act by virtue of a majority vote of members present at a meeting.

(5) The members of the board serve at the pleasure of the governor.

History. I.C., § 54-706, as added by 1980, ch. 334, § 2, p. 862; am. 1982, ch. 142, § 1, p. 400; am. 1996, ch. 66, § 3, p. 198; am. 1999, ch. 164, § 1, p. 451; am. 2011, ch. 308, § 1, p. 875.

STATUTORY NOTES

Cross References. Department of self-governing agencies, § 67-2601 et seq. the section to the extent that a detailed comparison is impracticable.

Prior Laws. Former § 54-706 was repealed. See Prior Laws, § 54-701. **Effective Dates.** Section 2 of S.L. 2011, ch 308 declared an emergency. Approved April 11, 2011.

Amendments. The 2011 amendment, by ch. 308, rewrote

54-707. Powers and duties. — The board shall have the authority to:

- (1) Hire or appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners;
- (2) Establish, pursuant to the provisions of chapter 52, title 67, Idaho Code, rules for the administration of the provisions of this chapter;
- (3) Conduct investigations and examinations and hold hearings;
- (4) Revoke or suspend licenses to practice chiropractic after providing the licensee with an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code;
- (5) In any disciplinary proceeding pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have the power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records, and papers as it may desire at any hearing and, for that purpose, the board may issue a subpoena for any witnesses or subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county in the state of Idaho, where such witness resides or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid from any funds in the state treasury in the same manner as other expenses of the board are paid. The licensee accused in such proceedings shall have the same right of subpoena upon making application to the board therefor. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum, served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court of any county in this state in which this disobedience, neglect or refusal occurs, on application by the board to compel compliance with the subpoena, to issue its order directing compliance with such subpoena, and in the event of a violation of such order, to compel compliance with such order by proceedings for contempt as in the case of disobedience of the requirement of a subpoena issued from such court or for refusal to testify therein;
- (6) Seek injunctive relief prohibiting the unlawful practice of chiropractic;
- (7) Make and enter into contracts in the necessary performance of its duties pursuant to this chapter;
- (8) Develop and submit a proposed budget setting forth the amount necessary to perform its functions;
- (9) Perform such other duties as set forth in the laws of this state;
- (10) Provide such other services and perform such other functions as are necessary to fulfill its responsibilities;
- (11) Adopt rules to provide for reasonable fees and for administrative costs and to assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee has been found to be in violation thereof;
- (12) Adopt a rule requiring continuing education as a condition of continued licensure; and

(13) Adopt rules pursuant to chapter 52, title 67, Idaho Code, to establish and operate a system of peer review for chiropractic physicians which shall include, but not be limited to, the appropriateness, quality, utilization, and cost of chiropractic services and the ethical performance of chiropractic care.

History. § 2, p. 862; am. 1991, ch. 141, § 1, p. 332; am. I.C., § 54-707, as added by 1980, ch. 334, 1993, ch. 216, § 56, p. 587.

STATUTORY NOTES

Prior Laws.
Former § 54-707 was repealed. See Prior Laws, § 54-701.

54-708. Board to issue licenses — Renewal and reinstatement. —

(1) The board shall issue licenses to practice chiropractic to persons who have qualified therefor in accordance with the provisions of this chapter. The board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by sections 54-704 and 54-712, Idaho Code, provided, that the board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. Such licenses shall be issued after payment of the licensing fee in an amount to be fixed by the board not to exceed one hundred fifty dollars (\$150). All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) The board may renew, on an inactive basis, the license of a physician who is not practicing chiropractic in this state. The board shall fix and collect an inactive license fee for such an inactive license renewal in an amount not to exceed one hundred fifty dollars (\$150) and each inactive license shall be issued for a period of one (1) year. A physician holding an inactive license may not engage in the practice of chiropractic in this state. If a physician wishes to convert his inactive license to an active license, he must account to the board for that period of time in which he held an inactive license. All fees authorized by subsections (1) and (2) of this section shall be paid to the bureau of occupational licenses.

(3) Whenever the board determines that an applicant for a license to practice chiropractic is not qualified for such a license pursuant to the provisions of this chapter, the board shall notify the applicant by certified mail of its denial of licensure and the reasons for denial.

History. 2003, ch. 21, § 6, p. 77; am. 2003, ch. 277, § 2, I.C., § 54-708, as added by 1980, ch. 334, p. 741.
§ 2, p. 862; am. 1993, ch. 157, § 3, p. 401; am.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-708 was repealed. See Prior Laws, § 54-701.

Amendments.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 21, § 6, rewrote the former second and third sentences of subsection (1) to revise the license renewal process and added the last sentence of that subsection.

The 2003 amendment, by ch. 277, § 2, increased the maximum license renewal fee to \$150 in subsections (1) and (2).

54-709. Licensure by written examination. — (1) Any person seeking to be licensed to practice chiropractic in this state must successfully complete the following requirements before a license will be issued:

(a) Each applicant must submit a completed written application and a fee not to exceed one hundred fifty dollars (\$150) to the board on forms furnished by the board, which shall require proof of graduation from an acceptable school of chiropractic;

(b) Each applicant must pass an examination conducted by or acceptable to the board which shall thoroughly test the applicant's fitness to practice chiropractic. Such examinations must include, but shall not be limited to, the following subjects: anatomy and histology; clinical blood chemistry and hematology; pathology; bacteriology; clinical nutrition; hygiene and sanitation; physiology; symptomatology; urinalysis; chiropractic jurisprudence; chiropractic orthopedics; physiotherapy; chiropractic principles, clinical and physical diagnosis; chiropractic adjustment; neurology, and palpation.

(2) If an applicant fails to pass an examination on two (2) separate occasions, he shall not be eligible to take the examination again for at least one (1) year, and before taking the examination again, he must make a showing to the board that he has successfully engaged in a course of study for the purpose of improving his ability to engage in the practice of chiropractic. Applicants who fail two (2) separate examinations in another state, territory or district of the United States or Canada, must make a showing to the board of successful completion of a course of study prior to examination for licensure.

(3) Applicants may be personally interviewed by the board or a designated committee of the board. The interviews may be conducted to specifically review the applicant's qualifications and professional credentials. The applicant shall be further examined by the board to determine that the applicant possesses the arts and skills of chiropractic adjusting.

History.

I.C., § 54-709, as added by 1980, ch. 334,

§ 2, p. 862; am. 1993, ch. 157, § 4, p. 401; am. 2003, ch. 277, § 3, p. 741.

STATUTORY NOTES

Prior Laws.

Former § 54-709 was repealed. See Prior Laws, § 54-701.

54-710. Licensure by endorsement. — Any person seeking to be licensed to practice chiropractic in this state who is licensed to practice chiropractic in another state must successfully complete the following requirements before a license to practice chiropractic will be issued.

(1) Each applicant must submit a completed written application and a fee not to exceed one hundred fifty dollars (\$150) to the board on forms furnished by the board which require proof of graduation from an acceptable school of chiropractic and which contains proof that the applicant has for five (5) consecutive years immediately prior to application, practiced chiropractic and holds a valid, unrevoked, unsuspended license to practice chiropractic in a state, territory or district of the United States or Canada, and a national board of chiropractic examiner's certificate.

(2) Each applicant must demonstrate that he possesses the requisite qualifications to provide the same standard of chiropractic care as provided by physicians in this state. The board may require further examination to establish such qualifications.

History.

§ 2, p. 862; am. 1987, ch. 144, § 2, p. 286; am.

I.C., § 54-710, as added by 1980, ch. 334, 2003, ch. 277, § 4, p. 741.

STATUTORY NOTES

Prior Laws.

Former § 54-710 was repealed. See Prior Laws, § 54-701.

54-711. Temporary practice, registration and permit. — (1) Any person who has submitted an application to the board for licensure by examination to practice chiropractic in the state of Idaho, may register with the board and be granted a permit to practice chiropractic prior to examination and licensure in accordance with board rules upon the following conditions:

(a) The applicant must submit a completed registration application to the board on forms furnished by the board together with a fee of not more than one hundred dollars (\$100), and must affirmatively show that the applicant will take the next scheduled examination for licensure approved by the board, and that the applicant has not failed two (2) previous examinations for licensure approved by the board; and

(b) A licensed physician certifies to the board that such applicant will practice chiropractic only under the direct and immediate supervision of such physician and only in the office of such physician.

(2) Any person who has completed the required course of study from an acceptable school of chiropractic, but has not yet graduated, may register with the board and be granted a permit to serve a chiropractic internship in accordance with board rules and upon the following conditions:

(a) The applicant must submit a completed registration application to the board on forms furnished by the board and submit a fee of not more than one hundred dollars (\$100); and

(b) A licensed physician certifies to the board that such applicant will

practice chiropractic only under the direct and immediate supervision of such physician and only in the office of such physician.

History.

I.C., § 54-711, as added by 1980, ch. 334, § 2, p. 862; am. 1987, ch. 144, § 3, p. 286; am. 2001, ch. 80, § 2, p. 201; am. 2003, ch. 277, § 5, p. 741.

STATUTORY NOTES**Prior Laws.**

Former § 54-711 was repealed. See Prior Laws, § 54-701.

54-712. Discipline by the board — Grounds. — Any license or permit issued under the provisions of this chapter shall be subject to restriction, suspension, revocation or other discipline pursuant to the provisions of sections 54-707 and 54-713, Idaho Code, if the board finds that the licensee:

(1) Has been convicted, found guilty, received a withheld judgment or suspended sentence in this or any other state of a felony or a crime involving moral turpitude;

(2) Used false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of this chapter or misrepresented or concealed a material fact in obtaining licensing, renewal or reinstatement;

(3) Practiced chiropractic under a false or assumed name in this or any other state;

(4) Advertised the practice of chiropractic in a false, misleading or deceptive manner;

(5) Knowingly aided or abetted any person to practice chiropractic who is not authorized to practice chiropractic as provided in this chapter or failed to adequately supervise auxiliary staff who have contact with patients which creates or results in an unreasonable risk of harm to the patient;

(6) Is unable to obtain or renew a license to practice chiropractic, or whose license to practice chiropractic has been restricted, revoked or suspended by any other state, territory or district of the United States or foreign jurisdiction; a certified copy of the order shall be conclusive evidence of any restriction, revocation or suspension of a license;

(7) Failed to safeguard the confidentiality of chiropractic records or other chiropractic information pertaining to identifiable clients, except as required or authorized by law;

(8) Practiced chiropractic when a license pursuant to this chapter is suspended, revoked, or inactive due to failure to renew the annual license within the time and manner required by the board;

(9) Refused to divulge to the board, upon demand, the means, method, device or instrumentality used in the treatment of a disease, injury, ailment, or infirmity;

(10) Has engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the licensee by the patient;

(11) Has committed any act which constitutes a felony or has committed any act which constitutes a crime involving moral turpitude;

(12) Is unable to practice chiropractic with reasonable skill and safety by reason of:

- (a) Mental illness; or
- (b) Physical illness including, but not limited to, physical deterioration which adversely affects cognitive, motor or perceptive skills; or
- (c) Habitual or excessive use or abuse of drugs defined in law as controlled substances, alcohol, or any other substances which impair ability; or
- (d) Having a communicable, contagious or infectious disease which endangers the health of patients;

(13) Has violated the standard of care or code of ethics as adopted by the board or misrepresented or committed fraud in any aspect of the business or practice of chiropractic;

(14) Promoted unnecessary or inefficacious treatment, procedures, devices or services or practiced in an incompetent or negligent manner resulting in or creating an unreasonable risk of harm; or

(15) Has violated any provision of this act or any rule promulgated by the board for the administration or enforcement of this act, interfered with the board's conduct of investigations, hearings or any other matters relating to discipline including, but not limited to, misrepresenting facts, attempting to influence witnesses or failing to answer subpoenas, or otherwise failed to cooperate with the board in the fulfillment of its duties.

History.

I.C., § 54-712, as added by 1980, ch. 334, § 2, p. 862; am. 1987, ch. 144, § 4, p. 286; am. 1993, ch. 157, § 5, p. 401.

STATUTORY NOTES

Prior Laws.

Former § 54-712 was repealed. See Prior Laws, § 54-701.

subsection (15), refers to S.L. 1987, ch. 144, which is codified as §§ 54-710 to 54-712. The reference probably should be to "this chapter," meaning chapter 7, title 54, Idaho Code.

Compiler's Notes.

The term "this act," appearing twice in

54-713. Penalties and reinstatement. — (1) Upon the finding of the existence of grounds for discipline of any person holding a license, seeking a license, or renewing a license under the provisions of this chapter, the board may impose one (1) or more of the following penalties:

- (a) Suspension of the offender's license for a term to be determined by the board;
- (b) Revocation of the offender's license;
- (c) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of chiropractic in a particular manner for a term to be determined by the board;
- (d) Refusal to renew the offender's license;
- (e) Placement of the offender on probation and supervision by the board for a period of time and under terms and conditions to be determined by the board;
- (f) Imposition of an administrative fine not to exceed two thousand dollars (\$2,000) plus costs of prosecution and reasonable attorney fees;

(g) Written letters of censure or reprimand which shall become a permanent record in the files of the licensee and which may be published within the discretion of the board; or

(h) Restitution for losses suffered or reimbursement for any damages incurred by a patient as a result of a violation of this chapter.

(2) In lieu of the penalties imposed by subsection (1) of this section, the board and licensee may enter into a written mutual agreement whereby the licensee agrees to discontinue a particular activity or comply with the provisions of this chapter without an admission or finding of culpability of the licensee, the violation of which may be the basis for disciplinary action by the board.

(3) Any person whose license to practice chiropractic in this state has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(4) Nothing herein contained shall be construed as barring criminal prosecutions for violations of the provisions of this chapter where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(5) All final decisions by the board shall be subject to judicial review pursuant to the provisions of the administrative procedure act.

History.

I.C., § 54-713, as added by 1993, ch. 157,
§ 6, p. 401.

STATUTORY NOTES

Prior Laws.

Another former § 54-713 was repealed. See
Prior Laws, § 54-701.

Compiler's Notes.

Former § 54-713 was amended and reded-

ignated as § 54-714 by § 7 of S.L. 1993, ch.
157.

The administrative procedure act, referred
to in subsection (5), is codified as § 67-5201 et
seq.

54-714. Observation of public health law. — Each physician shall observe and be subject to all state, federal, and municipal regulations relating to the control of contagious and infectious diseases, reporting and certifying deaths and all matters pertaining to public health. Failure to comply with these requirements shall constitute grounds for disciplinary action pursuant to the provisions of this chapter.

History.

I.C., § 54-713, as added by 1980, ch. 334,

§ 2, p. 862; am. and redesign. 1993, ch. 157,
§ 7, p. 401.

STATUTORY NOTES

Prior Laws.

Former § 54-714, which comprised 1919, ch. 167, § 13, p. 535; C.S., § 2154; I.C.A., § 53-914; am. 1937, ch. 169, § 7, p. 275, was repealed by S.L. 1980, ch. 334, § 1.

Compiler's Notes.

This section was formerly compiled as § 54-713.

Section 3 of S.L. 1980, ch. 334 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any per-

son or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 4 of S.L. 1980, ch. 334 read: "Nothing in this act shall be construed to invalidate the license of any person holding a valid, unrevoked and unsuspended license to practice chiropractic in this state on the effective date of this act. The rules and regulations of the board in effect on the effective date of this act shall continue in full force and effect until the board has adopted supplemental rules and regulations pursuant to this act."

54-715. Peer review committee. — The board of examiners may act as a peer review committee or may appoint other licensed chiropractors to perform such functions as set forth in section 54-707(13), Idaho Code.

(1) No monetary liability on the part of, and no cause of action for damages may arise against any member of a peer review committee duly appointed pursuant to the provisions of this chapter, for any act or proceeding undertaken or performed within the scope of the functions of such committee as provided in rules to be promulgated by the board pursuant to chapter 52, title 67, Idaho Code, if the committee member:

- (a) Acts without malice;
- (b) Has made a reasonable effort to obtain the facts of the matter on which the member acts; and
- (c) Acts in reasonable belief that the action taken is warranted by the facts as known by the member after a reasonable effort to obtain facts.

(2) The contested case provisions of chapter 52, title 67, Idaho Code, do not apply to activities of the peer review committee.

(3) All licensees shall, as a condition of licensure, fully cooperate with and promptly respond to inquiries and requests from the committee[.]

(4) The recommendations of the committee as to necessity for services of a licensee, and as to reasonableness of charges and procedures shall be reported to the person who requested the review and one (1) member of the board of examiners as designated by the board.

History.

I.C., § 54-715, as added by 1996, ch. 190, § 1, p. 598.

STATUTORY NOTES

Compiler's Notes.

The bracketed period at the end of subsection (3) was inserted by the compiler to add

punctuation missing in the enacting legislation.

CHAPTER 8

COSMETICIANS

SECTION.

- 54-801. Declaration of policy.
- 54-802. Definitions.
- 54-803. Regulation of cosmetological establishments.
- 54-804. Exemptions.
- 54-805. Requirements for license.
- 54-805A. Requirements for license — Retail cosmetics dealer.
- 54-805B. Requirements for license — Limitations of license — Makeover or glamour photography business.
- 54-806. Schools and establishments — Who may operate — Licensure — Management.
- 54-807. Practice of apprentice.
- 54-808. Regulations for schools.
- 54-809. Applications.
- 54-810. Examinations.
- 54-811. Issuance of certificate and license.
- 54-812. Endorsement licensure.
- 54-813. Practitioners prior to amendments.
- 54-814. Display of license.
- 54-815. Renewal and reinstatement of licenses.
- 54-816. Refusal, revocation or suspension of license — Sanctions.

SECTION.

- 54-817. Hearings.
- 54-818. Fees.
- 54-819. Certain acts prohibited.
- 54-820. Perjury.
- 54-821. Administrative regulations.
- 54-822. Public records for licenses.
- 54-823. Fees deposited in state treasury.
- 54-824. Establishments — Inspection rules.
- 54-824A. Sanitation.
- 54-825. Separability.
- 54-826. Short title.
- 54-827. Permit to practice, demonstrate or teach cosmetology.
- 54-828. Idaho board of cosmetology — Appointment — Term.
- 54-829. Board — Qualifications of members.
- 54-830. Board — Powers. [Repealed.]
- 54-831. Board — Organization and meetings.
- 54-832. Compensation and expenses of board members.
- 54-833. Removal of board members and filling vacancies.
- 54-834. Records and reports.
- 54-835. Judicial review.
- 54-836. Counsel — Court action.
- 54-837. Minimum hours of instruction for certain services.

54-801. Declaration of policy. — In order to safeguard the public health, safety and welfare, every person practicing or offering to practice cosmetology or electrology, as hereinafter defined, shall submit evidence of his qualifications and be licensed as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice cosmetology or electrology, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a licensed cosmetologist or electrologist, unless such person has been duly licensed under the provisions of this chapter and any amendments thereto; and it shall be unlawful for any person to operate a cosmetological establishment or school of cosmetology unless such cosmetological establishment or school of cosmetology has been duly licensed for such purpose as hereinafter provided.

History.

1929, ch. 265, § 1, p. 601; I.C.A., § 53-1201; am. 1949, ch. 207, § 1, p. 433; am. 1959, ch.

281, § 1, p. 574; am. 2001, ch. 134, § 1, p. 482.

STATUTORY NOTES

Cross References.

Cosmeticians exempt from provisions of Idaho barber law, § 54-504.

JUDICIAL DECISIONS

Cited in: Pearce v. Moffatt, 60 Idaho 370, 92 P.2d 146 (1939).

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 1 et seq.

A.L.R. — Liability of cosmetology school for injury to patron. 81 A.L.R.4th 444.

54-802. Definitions. — For the purpose of this chapter, the following definitions shall apply:

(1) "Cosmetology" shall constitute any one (1) or combination of the following practices when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

(a) Cutting, trimming, arranging, dressing, curling, waving by any method, cleansing, singeing, bleaching, coloring, or similar work upon the hair.

(b) Noninvasive care of the skin of the face and body by application of cosmetic preparations, antiseptics, tonics, lotions, creams and essential oils to cleanse, massage, exfoliate, hydrate and stimulate; makeup application; pore extraction; use of chemical exfoliants approved for professional esthetic use; particle exfoliation; use of any mechanical or electrical apparatus or appliance designed for nonmedical care of the skin; the temporary removal of superfluous hair by means of lotions, creams, waxing, tweezing or depilatories, and tinting of eyebrows and eyelashes.

(c) Manicuring, pedicuring the nails, and the application of artificial nails.

(2) "Registered cosmetologist" shall mean any person licensed to practice cosmetology.

(3) "Nail technology" shall constitute any one (1) or more of the following practices when done upon the human body:

(a) Manicuring, pedicuring the nails, and the application of all forms of artificial nails.

(b) Massage of the hands and feet.

(4) "Nail technician" shall mean any licensed person whose practice of cosmetology is limited to nail technology.

(5) "Nail technology instructor" shall mean a nail technologist who is licensed to teach nail technology or any practice thereof in a school of cosmetology.

(6) "Apprentice" shall mean any person registered with the board to engage in the learning or acquiring of any or all of the practices of cosmetology in a licensed cosmetological establishment, and while so learning performs or assists in any of the practices of cosmetology.

(7) "Student" shall mean any person engaged in the learning or acquiring of any or all of the practices of cosmetology in a licensed school of cosmetology, and while so learning performs or assists in any of the practices of cosmetology.

(8) "Instructor" shall mean a cosmetologist who is licensed to teach cosmetology or any practices thereof in a school of cosmetology, school or

college of barbering, or cosmetology establishment meeting the requirements for apprenticeship training.

(9) "Instructor trainee" shall mean a registered cosmetologist who is in a school of cosmetology to receive training to teach cosmetology.

(10) "Cosmetological establishment" shall mean any licensed place or part thereof other than a school of cosmetology wherein cosmetology is practiced.

(11) "School of cosmetology" shall mean any licensed place or part thereof wherein cosmetology is taught to students.

(12) "Board" means the Idaho board of cosmetology.

(13) "Department" means the Idaho department of self-governing agencies.

(14) "Chapter" as used herein refers to chapter 8, title 54, Idaho Code.

(15) "Electrologist" means any person licensed to practice electrology and who is skilled in the permanent removal of unwanted hair.

(16) "Electrolysis or electrology" means the permanent removal of hair by destroying the hair producing cells of the skin and vascular system using equipment and devices approved by and registered with the United States food and drug administration.

(17) "Esthetics" means noninvasive care of the skin of the face and body by application of cosmetic preparations, antiseptics, tonics, lotions, creams and essential oils to cleanse, massage, exfoliate, hydrate and stimulate; makeup application; pore extraction; use of chemical exfoliants approved for professional esthetic use; particle exfoliation; use of any mechanical or electrical apparatus or appliance designed for nonmedical care of the skin; the temporary removal of superfluous hair by means of lotions, creams, waxing, tweezing or depilatories, and tinting of eyebrows and eyelashes.

(18) "Esthetician" means any person licensed to practice esthetics.

(19) "Esthetics instructor" shall mean an esthetician who is licensed to teach esthetics or any practice thereof in a school of cosmetology approved to teach esthetics.

(20) "Electrologist instructor" shall mean an electrologist who is licensed to teach electrology or any practices thereof in a school of cosmetology approved to teach electrology.

(21) "Student electrologist instructor" shall mean an electrologist who is in a school of cosmetology approved to teach electrology to receive training to teach electrology.

(22) "Makeover or glamour photography business" means any business engaged in the offering of photographic services to the general public and whose employees engage in the facial application of cosmetic products or the arranging of the hair of customers in connection with the sale, or attempted sale, of photographic services.

(23) "Retail cosmetics dealer" means a fixed retail business which offers cosmetic products for sale at retail to members of the general public and whose employees engage in the facial application of cosmetic products to customers in connection with the sale, or attempted sale, of the products without compensation from the customer other than the regular price of the merchandise.

(24) “Demonstration, competition or production” means an organized event of limited duration where cosmetology services may be performed, if sponsored by a salon, school of cosmetology or cosmetology-related organization.

(25) “Haircutting” means cutting, trimming, arranging, dressing, curling, cleansing, singeing or similar work upon the hair.

(26) “Haircutter” means any licensed person whose practice of cosmetology is limited to haircutting.

History.

1929, ch. 265, § 2, p. 601; I.C.A., § 53-1202; am. 1949, ch. 207, § 2, p. 433; am. 1959, ch. 281, § 2, p. 574; am. 1974, ch. 13, § 68, p. 138; am. 1976, ch. 127, § 1, p. 477; am. 1980, ch. 80, § 1, p. 168; am. 1980, ch. 81, § 1, p. 173; am. 1988, ch. 74, § 3, p. 106; am. 1989, ch. 111, § 1, p. 253; am. 1990, ch. 98, § 1, p.

202; am. 1991, ch. 124, § 1, p. 270; am. 1994, ch. 312, § 1, p. 988; am. 1997, ch. 71, § 1, p. 146; am. 1998, ch. 288, § 1, p. 921; am. 1999, ch. 175, § 1, p. 471; am. 2001, ch. 134, § 2, p. 482; am. 2006, ch. 411, § 2, p. 1242; am. 2007, ch. 48, § 1, p. 120; am. 2008, ch. 86, § 1, p. 226; am. 2011, ch. 91, § 1, p. 197.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 411, added subsections (25) and (26).

The 2007 amendment, by ch. 48, rewrote subsection (1)(b), which formerly read: “Applying cosmetic preparations, antiseptics, tonics, lotions or creams, or massaging, cleansing, exercising, beautifying, or similar applications or work upon the scalp, face, neck, arms, hands, busts, or other parts of the body”; and rewrote subsection (17), which formerly read: “‘Esthetics’ shall constitute any one (1) or combination of the following practices when done on the human body: (a) Applying cosmetic preparations, antiseptics, tonics, lotions or creams, or massaging, cleansing, exercising, beautifying or similar applications of work to the human body. (b)

Nonpermanent hair removal by tweezing or waxing.”

The 2008 amendment, by ch. 86, in subsection (7), deleted “registered with the board to” following “person”; and in subsections (9) and (21), deleted “registered with the board” following “cosmetologist who is” and “electrologist who is,” respectively.

The 2011 amendment, by ch. 91, substituted “‘Instructor trainee’ shall mean a registered cosmetologist” for “‘Student instructor’ shall mean a cosmetologist” at the beginning of subsection (9).

Compiler’s Notes.

For more on the federal food and drug administration regulation of cosmetics, see <http://www.fda/cosmetics/default.htm>.

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, §§ 6, 7.

54-803. Regulation of cosmetological establishments. — Every establishment licensed under the provisions of this chapter shall meet the following requirements:

(1) It shall be unlawful to practice any of the occupations licensed under this chapter except in a place or establishment licensed therefor, or licensed under the provisions of chapter 5, title 54, Idaho Code.

(2) It shall be unlawful for any person to employ, or to allow to be employed, in or about an establishment licensed under the provisions of this chapter, any person not duly licensed under the provisions of this chapter except a registered barber holding a valid, unrevoked license practicing barbering.

(3) Where a licensed cosmetological establishment is located in or as a

part of a home or other building containing living quarters, the portions thereof which are used for the licensed practice of cosmetology shall not be used as living, dining, or sleeping quarters.

History.

1929, ch. 265, § 3, p. 601; I.C.A., § 53-1203; am. 1949, ch. 207, § 3, p. 433; am. 1959, ch. 281, § 3, p. 574; am. 1976, ch. 127, § 2, p.

477; am. 1980, ch. 80, § 2, p. 168; am. 1980, ch. 81, § 2, p. 173; am. 1991, ch. 124, § 2, p. 270; am. 2009, ch. 47, § 1, p. 128.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 47, made a

technical correction to the subsection designations.

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 6, 7.

54-804. Exemptions. — The provisions of this chapter shall not apply in the following instances:

(1) Persons authorized by the laws of this state to practice as a nurse or any of the healing arts, while in the proper discharge of their professional duties.

(2) Persons licensed to practice barbering or barber-styling in this state.

However, the provisions of this section shall not be construed to authorize the practice of cosmetology, except those acts that are permitted under the Idaho barber law.

(3) Persons practicing in their own home without compensation, and not practicing on the public in general.

(4) The provisions of section 54-803(1), Idaho Code, shall not apply to licensed parties performing cosmetological services for persons unable by reason of ill health, medical confinement or involuntary incarceration to go to a cosmetological establishment.

(5) The provisions of section 54-803(1), Idaho Code, shall not apply to licensed electrologists or licensed estheticians practicing electrolysis or esthetics under the supervision of a person licensed as a chiropractor, dentist, medical doctor or podiatrist at a facility utilized by the doctor.

(6) Persons whose practice is limited to the facial application of cosmetic products to customers in connection with the sale, or attempted sale, on the premises of a retail cosmetics dealer, of cosmetic products at retail, without compensation from the customer other than the regular price of the merchandise.

History.

1929, ch. 265, § 4, p. 601; I.C.A., § 53-1204; am. 1949, ch. 207, § 4, p. 433; am. 1959, ch.

281, § 4, p. 574; am. 1980, ch. 81, § 3, p. 173; am. 1988, ch. 74, § 4, p. 106; am. 1991, ch. 124, § 3, p. 270; am. 2003, ch. 49, § 1, p. 164.

STATUTORY NOTES

Cross References.

Licensing of nurses, § 54-1401 et seq.

Idaho barber law, § 54-501 et seq.

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 11.

54-805. Requirements for license. — Except as herein otherwise provided, the following shall be considered minimum requirements for license in the respective categories, and all applicants shall be of good moral character and temperate habits:

- (1) As a registered cosmetologist:
 - (a) Be sixteen and one-half (16 1/2) years of age.
 - (b) Completion of two (2) years' high school education or its equivalent.
 - (c) Graduation from and completion of a two thousand (2,000) hour course of instruction in a school of cosmetology, or a four thousand (4,000) hour course of instruction as an apprentice covering all phases of the practice of cosmetology.
 - (d) Successful passage of an examination for cosmetologist conducted by or acceptable to the board.
- (2) As an instructor of cosmetology, nail technology, esthetics or electrology: twelve (12) semester college credit hours or equivalent as approved by the board or successful completion of the examination required by board rules, and
 - (a) Hold a current license as a cosmetologist, nail technologist, esthetician or electrologist and satisfactory completion of a six (6) month teacher's course of instruction in a school of cosmetology, or
 - (b) Two (2) years' experience as a licensed cosmetologist, nail technologist, esthetician or electrologist in a registered cosmetological establishment and a three (3) month teacher's course of instruction in a school of cosmetology, or
 - (c) Five (5) years' experience as a licensed cosmetologist, nail technologist, esthetician or electrologist immediately preceding the application for license.
- (3) As an apprentice:
 - (a) Be sixteen and one-half (16 1/2) years of age.
 - (b) Have completed at least two (2) years of high school education or its equivalent.
- (4) As a nail technician:
 - (a) Be sixteen and one-half (16 1/2) years of age.
 - (b) Have completed at least two (2) years of high school education or its equivalent.
 - (c) Have completed and graduated from at least a four hundred (400) hour course of instruction and graduated from such training in a board approved school, or an eight hundred (800) hour course of instruction as an apprentice in a specified cosmetological establishment under the direct personal supervision of a licensed cosmetology instructor, who shall have

at least one (1) licensed nail technician on-site in the specified cosmetological establishment for each student being trained.

(d) Successful passage of an examination for nail technician conducted by or acceptable to the board.

(5) As an electrologist:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least an eight hundred (800) hour course of instruction and graduated from such training in a school approved by the board to teach electrology, or a one thousand six hundred (1,600) hour course of instruction as an apprentice in a specified cosmetological establishment under the direct personal supervision of a licensed electrologist instructor, who shall have at least one (1) licensed electrologist on-site in the specified cosmetological establishment as established by board rules.

(d) Successfully passed an examination for electrologist conducted by or acceptable to the board.

(6) As an esthetician:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least a six hundred (600) hour course of instruction for such in a school approved by the board to teach esthetics or a one thousand two hundred (1,200) hour course of instruction as an apprentice in a specified cosmetological establishment under the direct personal supervision of a licensed cosmetology instructor, who shall have at least one (1) licensed esthetician on-site in the specified cosmetological establishment for each student being trained.

(d) Successfully passed an examination for esthetician conducted by or acceptable to the board.

(7) As a haircutter:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least a nine hundred (900) hour course of instruction for such in a school approved by the board to teach haircutting.

(d) Successfully passed an examination for haircutter conducted by or acceptable to the board.

History.

1929, ch. 265, § 5, p. 601; I.C.A., § 53-1205; am. 1949, ch. 207, § 5, p. 433; am. 1959, ch. 281, § 5, p. 574; am. 1976, ch. 127, § 3, p. 477; am. 1980, ch. 80, § 3, p. 168; am. 1980, ch. 81, § 4, p. 173; am. 1990, ch. 98, § 2, p. 202; am. 1991, ch. 124, § 4, p. 270; am. 1994,

ch. 312, § 2, p. 988; am. 1998, ch. 287, § 1, p. 918; am. 1998, ch. 288, § 2, p. 921; am. 1999, ch. 175, § 2, p. 471; am. 2001, ch. 134, § 3, p. 482; am. 2004, ch. 82, § 1, p. 309; am. 2006, ch. 411, § 3, p. 1242; am. 2008, ch. 86, § 2, p. 228.

STATUTORY NOTES

Amendments.

This section was amended by two 1998 acts — ch. 287, § 1 and ch. 288, § 2, each effective July 1, 1998 which do not conflict and have been compiled together.

The 1998 amendment, by ch. 287, § 1, in subdivision 5.(c) added “or six hundred (600) hours of training in any cosmetological establishment under the direct supervision of a cosmetology instructor, who shall have at least one (1) registered nail technician on-site for each student being trained”, in subdivision 6.(c) deleted “regulations” preceding “rules” and in subdivision 7.(c) added “or one thousand (1,000) hours in any cosmetological establishment under the direct supervision of a cosmetology instructor, who shall have at least one (1) registered esthetician on-site for each student being trained”.

The 1998 amendment, by ch. 288, § 2, in

subdivision 6. deleted “/esthetician” following “electrologist”, in subdivision 6.(c) deleted “/esthetics” following “electrology”, deleted “/esthetician” following “electrologist”, and substituted “rules” for “regulations” at the end, in subdivision 6.(d) deleted “and esthetician” following “electrologist”, in subdivision 7.(c) substituted “six hundred (600)” for “five hundred (500)” and in subdivision 8. deleted “/esthetician” following “electrologist” three times.

The 2006 amendment, by ch. 411, added subsection (8).

The 2008 amendment, by ch. 86, throughout the section, substituted “conducted by or acceptable to the board” for “given under the direction of the board”; and deleted subsection (3), which pertained to the licensing requirements of students, and redesignated the subsequent subsections accordingly.

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, §§ 11, 12.

54-805A. Requirements for license — Retail cosmetics dealer. —

The board shall issue a license to a retail cosmetics dealer if it meets the following conditions:

1. Completes the application forms for licensure as required by the board;
2. Pays the appropriate license fees as required by section 54-818, Idaho Code;
3. Specifies a location within the retail cosmetics dealer’s business as the area where the cosmetics will be sold; and
4. Provides facilities and equipment in an area within the business premises to properly sanitize and store equipment and supplies necessary to perform any cosmetic application services provided. The required facilities and equipment shall include:
 - (a) hot and cold running water;
 - (b) chlorine water and alcohol, or any other acceptable method of sanitation between customer application services;
 - (c) single use samples, wipes, spatulas, or other dispensing techniques designed to prevent contamination of the cosmetic product;
 - (d) an adequate first aid kit; and
 - (e) adequate restroom facilities.

History.

I.C., § 54-805A, as added by 1988, ch. 74, § 5, p. 106.

54-805B. Requirements for license — Limitations of license — Makeover or glamour photography business. — (1) The board shall

issue a license to a makeover or glamour photography business which meets the following conditions:

- (a) Completes the application forms for licensure as required by the board;
- (b) Pays the appropriate license fees as required in section 54-818, Idaho Code;
- (c) Specifies a location within the photography business as the area where the cosmetological practices will take place; and
- (d) Provides facilities and equipment in the defined area within the business premises to properly sanitize and store equipment and supplies necessary to perform any cosmetic application services provided, including the arranging of hair by use of thermal styling equipment:
 - (i) Hot and cold running water;
 - (ii) Chlorine water and alcohol, or any other acceptable method of sanitation between customer application services;
 - (iii) Single use applicators, wipes, spatulas, or other dispensing techniques designed to prevent contamination of the cosmetic product(s);
 - (iv) An adequate first aid kit; and
 - (v) Adequate restroom facilities.

(2) Upon approval of an application for license as set forth in subsection (1) of this section, the board may issue a limited license for the practice of cosmetology, which license will limit the business to the application of facial cosmetics incidental to the photographic service offered and which will include the ability for the photographer or employee to arrange hair utilizing combs, brushes, picks and thermal curling devices such as curling irons, crimpers or heated rollers.

(3) This limited license will not entitle the photography business or any employee of such a business to furnish any cosmetological services unless incidental to the providing of photographic services and will not entitle such an individual or business to furnish any cosmetological services not specifically set forth in subsection (2) of this section.

History.

I.C., § 54-805B, as added by 1994, ch. 312,
§ 3, p. 988.

54-806. Schools and establishments — Who may operate — Licensure — Management. — (1) Any person, firm, association or corporation may own and operate a cosmetological establishment, provided that such establishment has been duly licensed with the board and each establishment maintains compliance with the requirements of section 54-803, Idaho Code.

(2) Any person, firm, association or corporation may own and operate a school of cosmetology, provided that such school has been duly licensed with the board, and the school maintains the requirements specified in section 54-808, Idaho Code.

History.

1929, ch. 265, § 6, p. 601; I.C.A., § 53-1206;
am. 1949, ch. 207, § 6, p. 433; am. 1959, ch.

281, § 6, p. 574; am. 1974, ch. 13, § 69, p.
138; am. 1976, ch. 127, § 4, p. 477; am. 1980,
ch. 80, § 4, p. 168; am. 1980, ch. 81, § 5, p.

173; am. 1990, ch. 98, § 3, p. 202; am. 1991, ch. 124, § 5, p. 270; am. 1994, ch. 312, § 4, p. 988; am. 2001, ch. 134, § 4, p. 482.

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 8.

54-807. Practice of apprentice. — No licensed apprentice may practice independently, but may do any and all acts necessary for training as a cosmetologist, nail technician, electrologist or esthetician providing the same is done under the immediate personal supervision of licensed registered cosmetologists, nail technicians, electrologists or estheticians in licensed cosmetological establishments where one (1) of said registered cosmetologists, nail technicians, electrologists or estheticians is a licensed instructor, and only one (1) such apprentice shall be employed for each two (2) licensed registered cosmetologists, nail technicians, electrologists or estheticians in any cosmetological establishment. Cosmetological establishments employing apprentices shall keep a daily work record of the attendance of such apprentices and shall, upon the termination of such apprenticeship, certify to the board the total number of hours worked and the types of instruction given the apprentice.

History.

1929, ch. 265, § 7, p. 601; I.C.A., § 53-1207; 13, § 70, p. 138; am. 1976, ch. 127, § 5, p. 477; am. 1998, ch. 287, § 2, p. 918; am. 2001, am. 1959, ch. 281, § 7, p. 574; am. 1974, ch. 134, § 5, p. 482.

54-808. Regulations for schools. — Every domestic school of cosmetology must be licensed under the provisions of this chapter and shall meet the following standards and provisions:

(1) Employ and maintain at least one (1) licensed instructor for every twenty (20) students or fraction thereof with an instructor trainee counting as an instructor for purposes of the student-instructor ratio, so long as there is a licensed instructor on the premises and available at all times;

(2) Possess sufficient apparatus and equipment for the proper and full teaching of all subjects of its curriculum;

(3) Keep a daily attendance record for each student;

(4) Maintain regular class and instruction hours, establish grades, and hold monthly examinations;

(5) Prescribe a school term for training in all phases of the practice of cosmetology;

(6) Provide applicable curriculums embracing subjects covering the scientific fundamentals for cosmetology, nail technology, esthetics, electrology, instructors and haircutting as follows:

(a) The curriculum for cosmetology shall include hygiene, bacteriology, histology of the hair, skin, muscles, nails and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands and nails, massaging and manipulating the muscles of the body, permanent waving, haircutting and arranging, dressing, coloring, bleaching and tinting of the hair, a study of

electricity as applied to cosmetology, and the Idaho laws and rules governing the practice of cosmetology;

(b) The curriculum for nail technology shall include hygiene, bacteriology, histology of the hands and feet, skin, muscles, nails and nerves, structure of the hands and feet, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, glands and nails, massaging and manipulating the muscles of the hands and feet, a study of electricity as applied to nail technology, and the Idaho laws and rules governing the practice of nail technology;

(c) The curriculum for esthetics shall include hygiene, bacteriology, histology of the skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, glands and nails, massaging and manipulating the muscles of the body, a study of electricity as applied to cosmetology, and the Idaho laws and rules governing the practice of esthetics;

(d) The curriculum for electrology shall include hygiene, bacteriology, histology of the hair, skin, muscles, nails and nerves, structure of the body, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands and nails, hypertrichosis, permanent removal of unwanted hair, a study of electricity as applied to electrology including the use and study of galvanic current, and the use and study of both automatic and manual high frequency current, and the Idaho laws and rules governing the practice of electrology;

(e) The curriculum for instructors shall include fundamentals of adult education, communication, preparation of lesson plans, practical and theoretical presentation and demonstration, use of teaching aids, measurement and evaluation, and the Idaho laws and rules governing cosmetology and electrology, in addition to teaching the acts prescribed in section 54-802, Idaho Code;

(f) The curriculum for haircutting shall include hygiene, bacteriology, histology of the hair, skin, muscles and nerves, structure of the head and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair and glands, massaging and manipulating of the muscles of the head and neck, haircutting and arranging, the study of electricity as applied to haircutting and Idaho laws and rules governing the practice of haircutting;

(7) Denote with clarity that the establishment is a school and that work is done by students. Such fact shall be made clear to the patron by signs conspicuously posted in the school and the adjoining shop, if any;

(8) All instructors must be licensed instructors in this state;

(9) Such school shall not permit any student or apprentice to receive instruction unless licensed under the provisions of this chapter;

(10) Every instructor shall devote his entire time during school or class hours to that of instructing the students and shall not apply his time to that of private or public practice;

(11) School hours for the purpose of instruction shall be offered on not less than a five (5) day week;

(12) Training received in an establishment not meeting the requirements for schools as herein set forth shall receive credit for said training as an

apprentice rather than as a student, provided said training meets the requirements for apprentice training;

(13) Training received in electrology in a school shall not be recognized unless the school has been approved for such training by the board and the school meets and maintains the requirements to train electrologists as established by board rules;

(14) Training received in esthetics shall not be recognized unless the school has been approved for such training by the board, and the school meets and maintains the requirements to train estheticians as established by board rules;

(15) Training received in nail technology shall not be recognized unless the school has been approved for such training by the board, and the school meets and maintains the requirements to train nail technicians as established by board rules;

(16) Every school approved by the board shall deliver to the board, a bond to the state of Idaho in a form approved by the board, and renew the same annually, in the sum of twenty-five thousand dollars (\$25,000) executed by a corporate surety company duly authorized to do business in this state, conditioned that such school shall continue to give its courses of instruction, in accordance with the provisions of this chapter, until it has completed all such courses for which students have enrolled, and conditioned that such school shall fully comply with all promises or representations made to enrolled students as an inducement to such students to enroll. Any student so enrolled who may be damaged by reason of the failure of such school to comply with such conditions, shall have a right of action in his or her own name, on such bonds, for such damage;

(17) Training received in haircutting shall not be recognized unless the school has been approved for such training by the board and the school meets and maintains the requirements to train haircutters as established by board rules.

History.

1929, ch. 265, § 8, p. 601; I.C.A., § 53-1208; am. 1949, ch. 207, § 7, p. 433; am. 1959, ch. 281, § 8, p. 574; am. 1974, ch. 13, § 71, p. 138; am. 1976, ch. 127, § 6, p. 477; am. 1980, ch. 81, § 6, p. 173; am. 1982, ch. 65, § 1, p.

127; am. 1991, ch. 124, § 6, p. 270; am. 1994, ch. 312, § 5, p. 988; am. 2001, ch. 134, § 6, p. 482; am. 2005, ch. 140, § 1, p. 432; am. 2006, ch. 411, § 4, p. 1242; am. 2008, ch. 86, § 3, p. 230; am. 2011, ch. 91, § 2, p. 197.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 411, inserted “and haircutting” in the introductory language of subsection (6) and added subsections (6)(f) and (18).

The 2008 amendment, by ch. 86, deleted subsection (13), which read: “All students, including those enrolled for instructor’s training, shall be registered by the school with the board, listing the name, age, and qualifications of the student required for such training. Forms for such enrollment may be provided by the board and a register of such

enrollments shall be maintained by the board. Hours of instruction shall be registered with the board as established by board rules, and a student may be permitted to transfer the credits earned at one (1) school to another school with permission of the board” and redesignated the subsequent subsections accordingly.

The 2011 amendment, by ch. 91, rewrote subsection (1), which formerly read: “Employ and maintain at least one (1) licensed instructor for every twenty (20) students or fraction thereof with a student instructor not counting

as a student for purposes of the student-instructor ratio.”

54-809. Applications. — Each applicant for a license shall:

(1) Make application to the board on forms authorized by the board and furnished thereby, such application to contain proof under oath by the applicant of the particular qualifications of the applicant and contain the names and addresses of three (3) character references.

(2) Furnish to said board a passport photograph of the applicant taken within the year preceding the filing of the application, together with a description of the applicant.

(3) Pay to the board the required fee.

(4) Provide such documentation and information to establish that the applicant meets the requirements for the license sought.

History.

1929, ch. 265, § 9, p. 601; I.C.A., § 53-1209; am. 1959, ch. 281, § 9, p. 574; am. 1974, ch. 13, § 72, p. 138; am. 1980, ch. 80, § 5, p. 168; am. 2001, ch. 134, § 7, p. 482; am. 2008, ch. 86, § 4, p. 232.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 86, added subsection (4).

54-810. Examinations. — The scope of the examinations and the methods of procedure shall be prescribed by the board with special reference to the applicant's general knowledge in the particular practices for which license is sought, and the applicant's ability to perform the particular work satisfactorily. Examinations shall include both a practical demonstration and written test.

History.

1929, ch. 265, § 10, p. 601; I.C.A., § 53-1210; am. 1959, ch. 281, § 10, p. 574; am. 1974, ch. 13, § 73, p. 138; am. 2001, ch. 134, § 8, p. 482; am. 2008, ch. 86, § 5, p. 233.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 86, deleted the former first sentence, which read: “Examinations shall be held at such times and places as the board shall determine”; and deleted the

last three sentences, which pertained to failing an examination, requirements for retaking another examination, and failing to appear for an examination.

54-811. Issuance of certificate and license. — The board shall issue a certificate of registration and a license to applicants who have successfully met the qualifications therefore [therefor]. The certificate shall be signed by the members of the board. The issuance of a license shall be prima facie evidence that the holder named thereon is entitled to engage in the practices designated therein. A registered cosmetologist may indicate this fact where his or her name or signature appears by placing the letters R.C. following his or her name.

History.
1929, ch. 265, § 11, p. 601; I.C.A., § 53-1211; am. 1959, ch. 281, § 11, p. 574; am.

1974, ch. 13, § 74, p. 138; am. 2001, ch. 134, § 9, p. 482.

STATUTORY NOTES

Compiler's Notes.
The bracketed insertion at the end of the

first sentence was added by the compiler to supply the probable intended word.

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 12.

54-812. Endorsement licensure. — The board, upon application and the payment of the fee required therefore [therefor], may issue a license without examination to any person who is at least eighteen (18) years of age and of good moral character and who has completed two (2) years of high school or its equivalent and who holds a certificate of qualification or license issued to him by the proper authority of any state, territory or possession of the United States, or of a foreign country, and either:

(1) Provides official documentation that the requirements for license under which the certificate was issued are of a standard not lower than those specified in this chapter, or

(2) Provides official documentation that said person has practiced the pursuit for which licensure is requested for at least three (3) years immediately prior to such application.

The board shall evaluate the applications for license by endorsement. No endorsement license shall be issued without the approval of the board.

History.
1929, ch. 265, § 12, p. 601; I.C.A., § 53-1212; am. 1949, ch. 207, § 8, p. 433; am. 1959, ch. 281, § 12, p. 574; am. 1974, ch. 13, § 75, p.

138; am. 1976, ch. 127, § 7, p. 477; am. 1980, ch. 80, § 6, p. 168; am. 1982, ch. 65, § 2, p. 127; am. 1994, ch. 312, § 6, p. 988; am. 2001, ch. 134, § 10, p. 482.

STATUTORY NOTES

Compiler's Notes.
The bracketed insertion in the introductory

paragraph was added by the compiler to supply the probable intended word.

JUDICIAL DECISIONS

Reciprocity Requirements.
The statutory requirements for obtaining a cosmetician's license by reciprocity are that an applicant must hold a valid license from another state and must show either that the standards of the other state are not lower than those in Idaho or that the applicant has

engaged in the licensed practice of cosmetology for three years. *Rawson v. Idaho State Bd. of Cosmetology*, 107 Idaho 1037, 695 P.2d 422 (Ct. App. 1985), overruled on other grounds, *Golay v. Loomis*, 118 Idaho 387, 797 P.2d 95 (1990).

54-813. Practitioners prior to amendments. — Any person who has qualified for license, including both individual and combined licenses, under the provisions of this chapter prior to an amendment thereof shall be entitled to such license. Any person who has commenced a course of training

under the provisions of this chapter prior to an amendment thereof changing the age, length of training, hours of training, or similar provisions, shall be entitled to complete his course of training under the provisions of the pre-existing law, and shall be entitled to such subsequent licenses at the termination of said training as he would have been entitled to had the provisions of this chapter not been amended. All licenses and registrations issued prior to amendments to this chapter shall be valid, providing that if registration or license was not required prior to such amendments, the parties affected shall be entitled to registration or license as herein provided by applying for registration or license in their particular category within ninety (90) days following the effective date of the amendment provided the applicant has pursued the activity for which registration or license is sought during the entire calendar year first prior to the effective date of the amendment.

History.

1929, ch. 265, § 13, p. 601; I.C.A., § 53-1213; am. 1959, ch. 281, § 13, p. 574; am.

1980, ch. 81, § 7, p. 173; am. 1998, ch. 288, § 3, p. 921.

54-814. Display of license. — Every holder of a license shall display it in a conspicuous place in his or her principal office, place of business, or employment.

History.

1929, ch. 265, § 14, p. 601; I.C.A., § 53-

1214; am. 1959, ch. 281, § 14, p. 574; am. 2001, ch. 134, § 11, p. 482.

54-815. Renewal and reinstatement of licenses. — Every license required by this chapter must be renewed annually, at the prescribed annual fee, in accordance with section 67-2614, Idaho Code. An expired license may be reinstated. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. The reinstatement fee shall be the sum of the accumulated annual renewal fees for the lapsed period, plus the current renewal fee and a twenty-five dollar (\$25.00) penalty.

History.

1929, ch. 265, § 15, p. 601; I.C.A., § 53-1215; am. 1949, ch. 207, § 9, p. 433; am. 1959,

ch. 281, § 15, p. 574; am. 1965, ch. 172, § 1, p. 339; am. 1976, ch. 127, § 8, p. 477; am. 2003, ch. 21, § 7, p. 77; am. 2008, ch. 86, § 6, p. 233.

STATUTORY NOTES

Cross References.

Military exemption from fees, § 67-2602A.

Amendments.

The 2008 amendment, by ch. 86, in the first

sentence, deleted “or certificate of registration” following “license”; and in the second sentence, deleted “or certificate” following “license.”

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 12.

54-816. Refusal, revocation or suspension of license — Sanctions.

— The board may refuse to issue or renew or may suspend or revoke any license, or may otherwise sanction or impose education, training or supervision on any licensee, for any one (1) of the following causes:

- (1) Conviction of a felony evidenced by a certified copy of the record of the court of conviction;
- (2) Malpractice or incompetency;
- (3) Continued practice by a person knowingly having an infectious or contagious disease;
- (4) Advertising by means of knowingly false or deceptive statements;
- (5) Habitual intoxication or addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (6) Unprofessional conduct;
- (7) Where the application is fraudulently made or the license fraudulently obtained;
- (8) The violation of any of the provisions of this chapter, or rules adopted pursuant thereto;
- (9) Has had a license, certificate or registration to practice cosmetology suspended or revoked in any jurisdiction; or
- (10) Failed to comply with a board order entered in a disciplinary matter.

History.

1929, ch. 265, § 16, p. 601; I.C.A., § 53-1216; am. 1959, ch. 281, § 16, p. 574; am. 1974, ch. 13, § 76, p. 138; am. 1976, ch. 127,

§ 9, p. 477; am. 1994, ch. 351, § 1, p. 1111; am. 2001, ch. 134, § 12, p. 482; am. 2008, ch. 86, § 7, p. 233; am. 2011, ch. 83, § 1, p. 175.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 86, deleted “registration or” preceding “license” in the section heading and twice in the text.

The 2011 amendment, by ch. 83, added “— Sanctions” to the end of the section heading; rewrote the introductory paragraph, which

formerly read: “The board may either refuse to issue or renew, or may suspend or revoke, any license for any one (1) of the following causes”; deleted “Immoral or” from the beginning of subsection (6); and added subsections (9) and (10).

JUDICIAL DECISIONS

Cited in: State v. Kouni, 58 Idaho 493, 76 P.2d 917 (1938); Rawson v. Idaho State Bd. of

Cosmetology, 107 Idaho 1037, 695 P.2d 422 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 12.

54-817. Hearings. — No refusal to renew, or the suspension or revocation of, a permit or license shall be made until the person affected has been given an opportunity to be heard on charges preferred in accordance with the provisions of chapter 52, title 67, Idaho Code. Such charges shall be in writing, and shall be sworn to by the person making them, and shall be filed with the board.

All charges, unless dismissed as unfounded or trivial, shall be heard

within four (4) months after the date on which they are received by the board.

All charges shall be heard by the board at such time and place as it shall fix, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on, or sent by registered mail to the last known address of such licensee or permittee at least twenty (20) days before the date set for the hearing. At any hearing the accused licensee or permittee shall have the right to appear personally or by counsel and to call witnesses in his own defense.

The board may subpoena witnesses and compel their attendance, and also may require the production of books, papers, documents, etc., in a case involving the revocation or suspension of a license, permit or the practicing or offering to practice without a license, or permit. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district judge of the district in which the witness may be found, setting forth the proceedings theretofore taken and briefly stating the subject matter upon which the testimony of the witness is required; thereupon such district judge may cause an order to be issued requiring such witness to appear before the board to testify and to produce such books, papers, and other documents as directed in the subpoena. Any person failing or refusing to obey such order shall be punished as for contempt of court.

History.

1929, ch. 265, § 17, p. 60; I.C.A., § 53-1217; am. 1959, ch. 281, § 17, p. 574; am. 1974, ch.

13, § 77, p. 138; am. 1993, ch. 216, § 57, p. 587; am. 2001, ch. 134, § 13, p. 482; am. 2008, ch. 86, § 8, p. 234.

STATUTORY NOTES

Cross References.

Contempts, § 7-601 et seq.

Amendments.

The 2008 amendment, by ch. 86, in the first paragraph, deleted “registration,” preceding

“permit or license”; in the third paragraph, twice substituted “licensee or permittee” for “registrant”; and in the last paragraph, twice deleted “or registration” following “permit” in the first sentence.

54-818. Fees. — The various fees to be paid by applicants for original licenses, permits, annual renewals, and fees for endorsement and examinations as required under this chapter shall be fixed by administrative rules of the board in amounts not to exceed the following:

(1) Original applications, permits, licenses, and annual renewals thereof:	
cosmetological establishment, original license	\$ 50.00
cosmetological establishment, annual renewals	50.00
retail cosmetics dealer, original license	50.00
retail cosmetics dealer, annual renewals	50.00
makeover or glamour photography business, original license	50.00
makeover or glamour photography business, annual renewals	50.00
domestic school of cosmetology, original license	500.00
domestic school of cosmetology, annual renewals	150.00
registered cosmetologist, original license/annual renewals	50.00
nail technician, original license/annual renewals	50.00

apprentice, original permit (no renewal fees required)	20.00
instructor, original license/annual renewals	50.00
electrologist, original license/annual renewals	50.00
esthetician, original license/annual renewals	50.00
haircutter, original license/annual renewals	50.00
endorsement fee	100.00
temporary permit to demonstrate and teach	10.00

(2) Examination fees:

The fee for examination, when required, shall be equal to that charged by the national examining entity. Fees shall not be prorated or returnable.

History.

1929, ch. 265, § 18, p. 601; I.C.A., § 53-1218; am. 1949, ch. 207, § 10, p. 433; am. 1959, ch. 281, § 18, p. 574; am. 1965, ch. 164, § 4, p. 317; am. 1975, ch. 1, p. 3; am. 1976, ch. 127, § 10, p. 477; am. 1980, ch. 81, § 8, p. 173; am. 1982, ch. 65, § 3, p. 127; am. 1988,

ch. 74, § 6, p. 106; am. 1989, ch. 289, § 1, p. 714; am. 1990, ch. 98, § 4, p. 202; am. 1991, ch. 124, § 7, p. 270; am. 1994, ch. 312, § 7, p. 988; am. 1998, ch. 288, § 4, p. 921; am. 1998, ch. 338, § 1, p. 1084; am. 2001, ch. 134, § 14, p. 482; am. 2006, ch. 411, § 5, p. 1242; am. 2008, ch. 86, § 9, p. 234.

STATUTORY NOTES

Amendments.

This section was amended by two 1998 acts — ch. 288, § 4, effective July 1, 1998 and ch. 338, § 1, effective July 1, 1998 — which do not conflict and have been compiled together.

The 1998 amendment, by ch. 288, § 4, in subdivisions (a) and (b), in the renewal schedule for “electrologist” each deleted “/ esthetician”; and, in subdivision (b), in the renewal schedule for “as an instructor when required”, each substituted “rule” for “regulation.”

The 1998 amendment, by ch. 338, § 1, in the renewal schedule, in subdivision (a), changed the renewal fees from \$35.00 to \$50.00 for annual renewals of cosmetological establishments, retail cosmetics dealers, and makeover or glamour photography businesses, \$25.00 to \$50.00 for annual renewals and original licenses of registered cosmetologists, nail technicians, and instructors, \$22.00 to \$50.00 for original licenses and annual renewals of electrologists and estheticians and \$35.00 to \$75.00 for interim certificates when endorsement denied.

The 2006 amendment, by ch. 411, added “haircutter, original license/annual renewals 50.00” and “as a haircutter 100.00” as entries in the form in subsection (1).

The 2008 amendment, by ch. 86, in the introductory paragraph, deleted “original registrations” preceding “original licenses”; in subsection (1), inserted “applications” near the beginning, and deleted the renewal fee listings for “student registration (no renewal fees required)” and “student instructor permit”; and rewrote subsection (2), which formerly was the separate examination fee listings for registered cosmetologist, nail technician, instructor, electrologist, esthetician, and haircutter.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1975, ch. 1 declared an emergency. Approved February 6, 1975.

54-819. Certain acts prohibited. — The following acts shall be unlawful and punishable as a misdemeanor:

- (1) The violation of any of the provisions of this chapter;
- (2) Permitting any person in one’s employ, supervision or control to practice cosmetology or electrology or as an apprentice or student unless that person has complied with the provisions of this act;
- (3) Obtaining or attempting to obtain a registration, permit or license for money other than the required fee, or any other thing of value, or by fraudulent misrepresentation;

(4) Practicing or offering to practice any of the occupations defined in this chapter, unless licensed as herein provided;

(5) Maintaining or operating a cosmetological establishment, a retail cosmetics dealer, or a school of cosmetology unless such facility is licensed as herein provided.

History.

1929, ch. 265, § 19, p. 601; I.C.A., § 53-1219; am. 1959, ch. 281, § 19, p. 574; am.

1980, ch. 81, § 9, p. 173; am. 1988, ch. 74, § 7, p. 106; am. 2001, ch. 134, § 15, p. 482.

STATUTORY NOTES

Cross References.

Punishment for misdemeanor where punishment not prescribed, § 18-113.

(2), refer to S.L. 1929, ch. 265 which is compiled as §§ 54-801 to 54-805, 54-806 to 54-824, 54-825 and 54-826. The reference probably should be to "this chapter," being chapter 8, title 54, Idaho Code.

Compiler's Notes.

The words "this act", as used in subsection

54-820. Perjury. — The wilful making of any false statement as to the material matter in any oath or affidavit which is required by the provisions of this chapter is perjury and punishable as such.

History.

1929, ch. 265, § 20, p. 601; I.C.A., § 53-1220; am. 1959, ch. 281, § 20, p. 574.

STATUTORY NOTES

Cross References.

Penalty for perjury, § 18-5409.

JUDICIAL DECISIONS

Cited in: Rawson v. Idaho State Bd. of Cosmetology, 107 Idaho 1037, 695 P.2d 422 (Ct. App. 1985).

54-821. Administrative regulations. — The board shall have authority to adopt, promulgate, and amend rules and regulations for the conduct of cosmetological establishments and schools of cosmetology to safeguard the public health, safety, and welfare, and for the performance of its duties and the regulation of proceedings before the board.

History.

1929, ch. 265, § 21, p. 601; I.C.A., § 53-1221; am. 1949, ch. 207, § 11, p. 433; am.

1959, ch. 281, § 21, p. 574; am. 1974, ch. 13, § 78, p. 138; am. 1981, ch. 116, § 5, p. 197; am. 1991, ch. 124, § 8, p. 270.

54-822. Public records for licenses. — The department shall keep a public record of all applications for licenses, the action of the department thereon, of all licenses issued and of all licenses revoked or forfeited with the reasons for such revocation or forfeiture and of all renewals.

History.

1929, ch. 265, § 22, p. 601; I.C.A., § 53-1222; am. 2008, ch. 86, § 10, p. 235.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 86, deleted “in a book appropriate for that purpose” preceding “a public record.”

54-823. Fees deposited in state treasury. — All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred by the board under the provisions of this chapter shall be a charge against and paid from said fund for such purposes, and the funds collected hereunder shall be immediately available for the administration of this chapter.

History.

1929, ch. 265, § 23, p. 601; I.C.A., § 53-1223; am. 1959, ch. 281, § 22, p. 574; am. 1974, ch. 13, § 79, p. 138.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602. compiler to correct the name of the referenced account. See § 67-2605.

Compiler’s Notes.

The bracketed insertion was added by the

54-824. Establishments — Inspection rules. — Inspections for the purpose of enforcing the provisions of this chapter shall be made by the board. The board shall have authority to prescribe sanitary requirements for cosmetological establishments, retail cosmetics dealers, and schools of cosmetology, to be applicable according to the nature of the work performed. The officers of the board, or its agents, shall have authority to enter upon and inspect any cosmetological establishment, retail cosmetics dealer, or school of cosmetology at any time during business hours. A copy of the rules and regulations adopted by the board shall be furnished by the said board to the owner or manager of each cosmetological establishment, retail cosmetics dealer, or school of cosmetology.

Investigators shall be appointed by the board to systematically inspect the cosmetological establishments, retail cosmetics dealers, and schools of cosmetology, and the number of such investigators shall be equal to one-half (1/2) of one per cent (1%) of the combined number of cosmetological establishments, retail cosmetics dealers, and schools of cosmetology in this state, provided the contributions to the occupational licenses fund [account] from fees provided for in this chapter are sufficient to cover the expenses incurred in administering this chapter and to pay for said investigators.

History.

1929, ch. 265, § 24, p. 601; I.C.A., § 53-1224; am. 1949, ch. 207, § 12, p. 433; am. 1959, ch. 281, § 23, p. 574; am. 1974, ch. 13, § 80, p. 138; am. 1981, ch. 116, § 6, p. 197; am. 1988, ch. 74, § 8, p. 106; am. 1991, ch. 124, § 9, p. 270.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the second paragraph was added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 13 of S.L. 1949, ch. 207, declared an emergency. Approved March 14, 1949.

54-824A. Sanitation. — (1) Except as otherwise provided in subsection (2) of this section, all instruments used by persons licensed pursuant to this chapter shall, after cleaning and prior to use on each patron, be disinfected with a disinfecting agent registered by the U.S. environmental protection agency as hospital grade or better.

(2) Nail instruments shall be sanitized in accordance with manufacturers' standards.

(3) Every precaution shall be taken by persons licensed pursuant to this chapter to prevent the transfer of disease causing pathogens from person to person.

History.

I.C., § 54-824A, as added by 2006, ch. 411, § 6, p. 1242.

54-825. Separability. — If any section, subdivision, sentence or clause of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter.

History.

1929, ch. 265, § 26, p. 601; I.C.A., § 53-1225; am. 1959, ch. 281, § 24, p. 574.

54-826. Short title. — This chapter may be cited as the Idaho Cosmetology Law.

History.

1929, ch. 265, § 27, p. 601; I.C.A., § 53-1226; am. 1959, ch. 281, § 25, p. 574.

54-827. Permit to practice, demonstrate or teach cosmetology. — (1) Upon application and payment of the required fee, the board or its designated agent shall grant a temporary permit authorizing a person to practice, demonstrate or teach cosmetology, or perform any one (1) or more of such functions in the following instances:

(a) When such permit is sought primarily for educational or demonstration purposes and the person making application therefor is licensed or qualified through proper documentation to practice or teach cosmetology in this or any other state, territory, possession of the United States or foreign country, and presents satisfactory evidence of that fact. When a permit is issued for this purpose, it shall specify the time and place when and where such educational demonstrations shall take place, and the permit shall be limited to such time and place, and in no instance shall said permit be for a period in excess of thirty (30) days.

(b) When a permit is requested for educational or demonstration purposes by a licensed school on behalf of its students currently enrolled or a licensed cosmetologist on behalf of an apprentice. When a permit is issued for this purpose, it shall specify the time and place of the education demonstration. In no instance shall the permit be for a period in excess of seven (7) days.

(c) When a permit is requested for practice by a person licensed under this chapter, by a licensed school on behalf of its students currently enrolled or by a licensed cosmetologist on behalf of an apprentice. When a permit is issued for this purpose, the permit holder shall observe and comply with the inspection and sanitation requirements established by board rule. The permit shall specify the location and date of practice and shall not exceed thirty (30) days. Members of the public may not be charged for any services performed in connection with a permit granted pursuant to this subsection.

(2) Facilities or locations used for cosmetological services pursuant to a permit obtained under this section shall be exempt from the requirements for licensed establishments set forth in section 54-803(1), Idaho Code. However, the facility or location and permit holder shall observe and comply with the inspection and sanitation requirements established by board rule.

History.

I.C., § 54-827, as added by 1959, ch. 281, § 26, p. 574; am. 1974, ch. 13, § 81, p. 138;

am. 1999, ch. 175, § 3, p. 471; am. 2001, ch. 134, § 16, p. 482; am. 2009, ch. 47, § 2, p. 128.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 47, in the section catchline, inserted "practice"; in the introductory paragraph in subsection (1), inserted "or its designated agent"; in the second sentence in subsection (1)(b), deleted "those students or apprentices eligible to participate

and" following "specify" and "and the permit shall be limited to those individuals and time and place" from the end; added subsection (1)(c); and, in subsection (2), deleted "subsection (1)(a) or (1)(b) of" preceding "this section" and inserted "or location" in the last sentence.

54-828. Idaho board of cosmetology — Appointment — Term. —

There is hereby created in the department of self-governing agencies a board to be known as the "Idaho Board of Cosmetology." It shall consist of three (3) registered cosmetologists, one (1) from the northern section of the state, one (1) from the south central section of the state, and one (1) from the southeastern section of the state, one (1) electrologist/esthetician and one (1) currently active cosmetology school representative, appointed by the governor from among nominees recommended by any organized and generally recognized group of cosmetologists in this state. The members of the board shall be appointed for terms of three (3) years. On the expiration of the term of any member, his successor shall be appointed in like manner by the governor for a term of three (3) years. Vacancies shall be filled in like manner for the unexpired portion of the term. Members of the board shall hold office until their successors have been appointed and have qualified. The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest.

The action and report in writing of a majority of the board with reference to the violation of any of the provisions of this chapter shall be the basis for the board to proceed according to the provisions of sections 54-816, 54-817, and 54-821, Idaho Code.

History.

I.C., § 54-828, as added by 1959, ch. 281, § 27, p. 574; am. 1974, ch. 13, § 82, p. 138; am. 1976, ch. 127, § 11, p. 477; am. 1980, ch.

80, § 7, p. 161; am. 1980, ch. 81, § 10, p. 173; am. 1989, ch. 289, § 2, p. 714; am. 1991, ch. 124, § 10, p. 270; am. 2004, ch. 326, § 1, p. 976.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Department of self-governing agencies, § 67-2601 et seq.

RESEARCH REFERENCES

Am. Jur. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 9.

54-829. Board — Qualifications of members. — Members of the board shall be at least twenty-five (25) years of age, and residents of this state for at least five (5) years prior to their appointment, and they shall have been engaged in the practice of cosmetology for at least three (3) years immediately preceding their appointment, and shall be licensed cosmetologists under the provision of this act. No member of the board shall be affiliated with a school of cosmetology or company selling cosmetic supplies while in office, and no two (2) members of the board can be graduates of the same school of cosmetology except that the qualifications for the cosmetology school representative and the electrologists shall be established by board regulations.

History.

I.C., § 54-829, as added by 1959, ch. 281,

§ 28, p. 574; am. 1976, ch. 127, § 12, p. 477; am. 1980, ch. 81, § 11, p. 173.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1959, ch. 281, which is compiled as §§ 54-801 to 54-805, 54-806 to 54-821, 54-823, 54-824, 54-825

to 54-829, and 54-831 to 54-836. Probably, the reference should be to "this chapter," being chapter 8, title 54, Idaho Code.

54-830. Board — Powers. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 54-

830, as added by 1959, ch. 281, § 29, p. 574, was repealed by S.L. 1991, ch. 124, § 11.

54-831. Board — Organization and meetings. — The board shall hold a meeting within thirty (30) days after its members are first appointed, and thereafter board meetings shall be held at such times and places as may be decided upon.

The board shall adopt such bylaws as it deems necessary and proper for the conduct of its business. The board shall annually elect a chairman, vice-chairman, and secretary from among its members. A majority of the members of the board shall constitute a quorum.

History. § 30, p. 574; am. 2004, ch. 326, § 2, p. 976;
I.C., § 54-831, as added by 1959, ch. 281, am. 2008, ch. 86, § 11, p. 235.

STATUTORY NOTES

Amendments. chapter to serve as examining assistants for
The 2008 amendment, by ch. 86, in the last terms of three (3) years who shall assist the
paragraph, deleted “and shall appoint per- board in the administration of license exami-
sons licensed under the provisions of this nations” from the end of the first sentence.

54-832. Compensation and expenses of board members. — Each member of the board shall be compensated as provided by section 59-509(n), Idaho Code.

History. 127, § 13, p. 477; am. 1980, ch. 247, § 55, p.
I.C., § 54-832, as added by 1959, ch. 281, 582; am. 1989, ch. 289, § 3, p. 714; am. 1996,
§ 31, p. 574; am. 1965, ch. 201, § 3, p. 446; ch. 66, § 4, p. 198; am. 2004, ch. 326, § 3, p.
am. 1969, ch. 135, § 1, p. 419; am. 1976, ch. 976; am. 2008, ch. 86, § 12, p. 236.

STATUTORY NOTES

Amendments. **Effective Dates.**
The 2008 amendment, by ch. 86, deleted Section 2 of S.L. 1969, ch. 135 declared an
“an each examining assistant” following emergency. Approved March 11, 1969.
“board.”

54-833. Removal of board members and filling vacancies. — The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient cause. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as provided in section 54-828, Idaho Code.

History.
I.C., § 54-833, as added by 1959, ch. 281,
§ 32, p. 574; am. 1974, ch. 13, § 83, p. 138.

54-834. Records and reports. — The board shall keep a permanent record of its proceedings and a register of all applications for registration or licensure, which register shall show:

- (a) the name, age, and residence of applicant;
- (b) the date of the application;
- (c) the location of applicant’s place of occupation or business;
- (d) the applicant’s educational and other qualifications;
- (e) whether registration or licensure was granted or denied;
- (f) the dates of action by the board; and
- (g) such other information as may be deemed necessary by the board.

The records of the board shall be kept in the bureau of occupational licenses offices, and the records of the board shall be prima facie evidence of

the proceedings of the board set forth therein. A transcript of the board records, duly certified by the secretary of the board or the bureau chief, shall be admissible in evidence in place of, and with the same force and effect as, the original records.

History.

I.C., § 54-834, as added by 1959, ch. 281,

§ 33, p. 574; am. 1974, ch. 13, § 84, p. 138; am. 2008, ch. 86, § 13, p. 236.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

introductory paragraph and in subsection (e), inserted "or licensure."

Amendments.

The 2008 amendment, by ch. 86, in the

54-835. Judicial review. — Any person who shall feel aggrieved by any action of the board in denying, suspending, or revoking his license may seek judicial review of such action in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 54-835, as added by 1959, ch. 281, § 34, p. 574; am. 1974, ch. 13, § 85, p. 138;

am. 1993, ch. 216, § 58, p. 587; am. 2008, ch. 86, § 14, p. 236.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 86, deleted "or certificate of registration" following "license."

54-836. Counsel — Court action. — The attorney general of this state or any assistant designated by him shall act as legal advisor to the board and shall prosecute in the name of the state of Idaho, in any court within the state of Idaho, any action which is deemed advisable or necessary for the proper enforcement of the provisions of this chapter; but nothing herein shall be construed to relieve the prosecuting attorneys of the respective counties from their responsibility to prosecute violations constituting criminal offenses as the same are declared to be such by the provisions of this chapter.

History.

I.C., § 54-836, as added by 1959, ch. 281, § 35, p. 574; am. 1974, ch. 13, § 86, p. 138.

STATUTORY NOTES**Effective Dates.**

Section 194 of S.L. 1974, ch. 13 provided the

act should be in full force and effect on and after July 1, 1974.

54-837. Minimum hours of instruction for certain services. — A student cosmetologist shall not be permitted to render any chemical service to a live human until such student has completed at least five percent (5%) of the required instruction.

History.

I.C., § 54-837, as added by 2006, ch. 411,
§ 7, p. 1242.

STATUTORY NOTES

Cross References.

Requirements for licenses, § 54-805.

CHAPTER 9

DENTISTS

SECTION.

- 54-900. Purpose.
- 54-901. Definition — Practice of dentistry.
- 54-902. Definition — Practice of dental hygiene.
- 54-903. General definitions.
- 54-904. Authorization for procedures performed under general supervision by dental hygienists.
- 54-905. Unlawful practice of dentistry.
- 54-906. Unlawful practice of dental hygiene.
- 54-907. State board of dentistry established.
- 54-908. State board of dentistry — Notice of vacancy — Nominees.
- 54-909. Board of dentistry — Qualifications of members.
- 54-910. State board of dentistry fund — Creation of.
- 54-911. Board of dentistry — Organization — Meetings — Expenses — Per diem.
- 54-912. Board of dentistry — Powers and duties.
- 54-913. Certificates — Licenses — Records.
- 54-914. Dentists and dental hygienists previously qualified.
- 54-915. Qualifications required for dentist or dental hygienist licensure.
- 54-916. Application for licensure — Fee.
- 54-916A. Dental hygiene applicants licensed in other states.
- 54-916B. Dental applicants licensed in other states.
- 54-917. Allowance or rejection of applicant.

SECTION.

- 54-918. Examinations — Certificate of qualification.
- 54-919. Cheating.
- 54-920. Licensing — License fees — Biennial renewal of licenses — Late fees and returned checks — Classifications of licenses — Rights of licensees — Notification of change of address.
- 54-921. Reinstatement.
- 54-922. Display of license.
- 54-923. Revocation for convictions of crime.
- 54-924. Other grounds of refusal, revocation or suspension of dentists — Probation agreements.
- 54-925. Other grounds of revocation or suspension of dental hygienists — Probation agreements.
- 54-926 — 54-929. [Repealed.]
- 54-930. Exceptions to application of act.
- 54-931. [Repealed.]
- 54-932. Lost or destroyed certificates or licenses.
- 54-933. Injunction — Procedure.
- 54-934. Peer review committees — Immunity from liability — Confidentiality of records.
- 54-935. Volunteer's license — Qualifications — Permissible practice — Immunity from liability.
- 54-936. Continued operation of dental practice — Death of sole proprietor dentist.

54-900. Purpose. — Recognizing that the practice of dentistry and dental hygiene is a privilege granted by the state of Idaho and is not a natural right of individuals, the purpose of this chapter is to assure the public health, safety and welfare in the state by the licensure and regulation of dentists and dental hygienists.

History.

I.C., § 54-900, as added by 1991, ch. 147,
§ 1, p. 347.

54-901. Definition — Practice of dentistry. — The practice of den-

tistry is the doing by one (1) person, for a direct or indirect consideration, of one or more of the following with respect to the teeth, gums, alveolar process, jaws, or adjacent tissues of another person, namely:

Examining for diagnosis, treatment, extraction, repair, replacement, substitution, or correction;

Diagnosing of disease, pain, injury, deficiency, deformity or physical condition;

Treating, operating, prescribing, extracting, repairing, taking impressions, fitting, replacing, substituting, or correcting;

Administering anesthetics or medicaments in connection with any of the foregoing.

History.

1949, ch. 102, § 1, p. 177; am. 1953, ch. 105, § 1, p. 138; am. 1957, ch. 81, § 1, p. 131; am.

1987, ch. 30, § 1, p. 39; am. 1994, ch. 58, § 1, p. 98.

STATUTORY NOTES

Cross References.

Incorporation of professional service corporations, § 30-1301 et seq.

Medical consent and natural death act, § 39-4501 et seq.

Prior Laws.

Acts 1949, ch. 102, repealed the old law relating to dentists (1919, ch. 60, p. 182; C.S., §§ 2116 to 2123, 2125, 2126, 2128 to 2136;

am. 1921, ch. 255, p. 548; am. 1925, ch. 105, p. 149; I.C.A., §§ 53-1301 to 53-1328; am. 1935, ch. 81, p. 137) in its entirety. The sections comprising this law appeared in the Idaho Code prior to revision as §§ 54-901 to 54-926. Owing to this complete repeal and to the fact that the 1949 act covered the same general subject-matter, the old section numbers were utilized in numbering the 1949 act.

JUDICIAL DECISIONS

ANALYSIS

Acts constituting practice.

Constitutionality.

Dental technician.

Denturists.

Effect of 1957 amendment.

Personal right.

Policy.

Technicians' limitations.

Acts Constituting Practice.

Evidence that one enjoined from performing the services required for the designing, making, and fitting of dentures as enumerated in this section supervised the taking of mouth and gum impressions by the patient, advised the patient to have new dentures made rather than to relined the old, made the dentures, fitted, and corrected them, was sufficient to find him in contempt of court for violation of such injunction. *Berry v. District Court*, 91 Idaho 600, 428 P.2d 519 (1967).

In action to enjoin operator of dental repair laboratory from practicing dentistry, where the trial court did not enjoin practicing dentistry but did enter decree perpetually restraining defendant from the doing of three specific acts connected with the fitting of

dentures, and transcript established that he did some of the acts defined as practicing dentistry, cause was remanded and trial court directed to make findings of fact specifying the particular forbidden acts the evidence showed the defendant was doing, to enter permanent injunction restraining the commission of such acts and to restrain him from practicing dentistry. *State ex rel. Wolfley v. Oster*, 75 Idaho 472, 274 P.2d 829 (1954).

Constitutionality.

Session Laws 1953, ch. 105, § 1 amended this section in such manner so as to regulate the calling of a dental mechanic or technician in performance of mechanical work upon inert matter in a dental laboratory, direct for artificial denture wearers; such amendment was

unconstitutional as doing away with vested rights by prohibiting the following of a chosen occupation recognized as an independent calling, namely dental mechanic or technician. *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1955).

Not only must the legislature have authority, under the police power, to regulate the practice of dentistry, but also the legislation enacted must reasonably serve the public health, safety and morals. *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1961).

S.L. 1957, ch. 81, amending this section is within the power and authority of the legislature to adopt, and reasonably tends to secure to the public further protection from diagnosis, prescription or treatment by unqualified practitioners, as well as protection from any false security likely to be induced in those users of prosthetic appliances who are served by dental technicians. *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1961).

Although this section does discriminate insofar as it excludes dental technicians from working on dental prosthetic appliances when such work requires the presence or cooperation of the wearer, such discrimination is not invalid in the absence of a showing that the distinctions created by the act are invidious or that the health and welfare of state citizens do not call for the regulation. *Idaho Ass'n of Pub. Dental Technicians, Inc. v. Idaho Bd. of Dental Exmrs.*, 97 Idaho 631, 550 P.2d 134 (1976).

Dental Technician.

Where the acts done by the dental technicians were manifestly within the rubric of the pertinent statutory prescriptions defining the practice of dentistry, trial court was correct in the issuance of permanent injunction enjoining the dental technician from doing those acts. *Board of Dentistry v. Barnes*, 94 Idaho 486, 491 P.2d 1258 (1971).

Where none of the plaintiff-dental technicians were involved in or threatened by a contempt proceeding for breaching a civil injunction secured by the board, the supreme court would not consider abstract question raised by dental technicians that the practice of the board in sending investigators to entrap dental technicians into violating injunction enjoining technicians from practice of dentistry was an attempt by the board to circumvent criminal procedure and, thus, was an abuse of the board's authority. *Idaho Ass'n of Pub. Dental Technicians, Inc. v. Idaho Bd. of Dental Exmrs.*, 97 Idaho 631, 550 P.2d 134 (1976).

Denturists.

The legislature did not act unreasonably in restricting the activities of denturists (technicians who make and repair dentures and dental appliances) in order to protect the

public from possible risks inherent in direct denturist-customer relationships and there was a rational basis for classifying any such direct contact as the practice of dentistry; accordingly, the statutory prohibitions against the denturists performing services directly for customers did not violate the due process or equal protection rights of denturists. *Board of Dentistry ex rel. State v. Clark*, 104 Idaho 87, 656 P.2d 148 (Ct. App. 1982).

Effect of 1957 Amendment.

Although the 1957 Act which amended this section was an amendment of the statutory definition of the term "practice of dentistry," the actual effect of the amendment was not to redefine "practice of dentistry" but to redefine "mechanical work upon inert matter in a dental laboratory," a statutory exception to the profession of practice of dentistry by persons not properly licensed. *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1961).

Personal right.

Where the state confers a license upon an individual to practice a profession, trade or occupation, such license becomes a valuable personal right, which cannot be denied or abridged in any manner except after due notice and a fair and impartial hearing before an unbiased tribunal. *Abrams v. Jones*, 35 Idaho 532, 207 P. 724 (1922).

Policy.

The policy reasons for the enactment of the statute are not within constitutionally prohibited limitations and are adequately founded on reasons of public health and welfare. *Board of Dentistry v. Barnes*, 94 Idaho 486, 491 P.2d 1258 (1971).

Technicians' Limitations.

The definition of the practice of dentistry places a fence around the technician; he could do the mechanical work upon the appliance but the results of his work, such as whether the appliance fits, must not require his diagnosis, his diagnosing or his treatment; the decision as to whether the appliance is satisfactory being strictly up to the wearer himself. *Berry v. Koehler*, 86 Idaho 225, 384 P.2d 484 (1963).

This section prohibits the performance of services in the areas of examination for diagnosis, diagnosing and treatment by technicians, such as the prohibition of the use of carbon paper and indicator paste in their work, such prohibition extending to the use of such indicators as concerns aspects of examination for diagnosis, diagnosing or treatment by the technician, the intent of this section being made apparent, that of limitation of the field of dentistry to those qualified by established standards. *Berry v. Koehler*, 84 Idaho

170, 369 P.2d 1010 (1961); *Berry v. Koehler*, 86 Idaho 225, 384 P.2d 484 (1963).

Cited in: *State v. Palmlund*, 95 Idaho 150, 504 P.2d 1199 (1972).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, § 6.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

A.L.R. — Liability of physician, surgeon, anesthetist, or dentist for injury resulting from foreign object left in patient. 10 A.L.R.3d 9.

Liability of physician or dentist for injury to patient from physical condition of office premises. 36 A.L.R.3d 1341.

Liability for injury allegedly resulting from negligence in making hypodermic injection. 45 A.L.R.3d 731.

Liability of dentist to patient. 11 A.L.R.4th 748.

Coverage and exclusions of liability or indemnity policy on physicians, surgeons, and other healers. 33 A.L.R.4th 14; 14 A.L.R.5th 695.

Medical malpractice: *Res ipsa loquitur* in negligent anesthesia cases. 49 A.L.R.4th 63.

54-902. Definition — Practice of dental hygiene. — The practice of dental hygiene is the doing by one (1) person for a direct or indirect consideration of one (1) or more of the following with respect to the teeth or dental health of another person, namely, cleaning, polishing, removing stains or concretions; performing nonsurgical periodontal therapy; administering prescribed anesthetics or medicaments; applying preventive agents; performing nonsurgical, clinical and laboratory oral diagnostic tests for interpretation by a dentist; preparation of preliminary records of oral conditions; and such other dental services as specified by the dentist unless prohibited by the board in its adopted rules.

History.

1949, ch. 102, § 2, p. 177; am. 1967, ch. 312,

§ 1, p. 886; am. 1971, ch. 83, § 1, p. 181; am. 1994, ch. 58, § 2, p. 98.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 3.

54-903. General definitions. — As used in this chapter:

(1) "Association" means the Idaho state dental association and the Idaho dental hygienists' association.

(2) "Board" means the state board of dentistry.

(3) "Conviction" or "convicted" means a finding of guilt by a judge or jury, an entry of a guilty plea by a defendant and its acceptance by the court, a forfeiture of a bail bond or collateral deposited to secure a defendant's appearance, a judgment of conviction, a suspended sentence, probation, or a withheld judgment.

(4) "Dental assistant" is a person who need not be licensed under this chapter, but who is regularly employed by a dentist at his office, who works under the dentist's supervision, and is adequately trained and qualified according to standards established by the board to perform the dental services permitted to be performed by assistants by this chapter and applicable rules of the board.

(5) "Dental hygienist" is a person both qualified and licensed by the laws of Idaho to practice dental hygiene.

(6) “Dental specialist” is a dentist who limits his practice to a specialty recognized by the American dental association, who has graduated from a board-approved postgraduate program in his specialty and is a person both qualified and licensed by the laws of Idaho to practice a dental specialty.

(7) “Dentist” is a person both qualified and licensed by the laws of Idaho to practice dentistry.

(8) “Direct supervision” is supervision of a dental assistant or dental hygienist requiring that a dentist diagnose the condition to be treated, a dentist authorize the procedure to be performed, a dentist remain in the dental office while the procedure is performed, and that before dismissal of the patient, a dentist approves the work performed by the dental assistant or dental hygienist.

(9) “Extended access oral health care program” means and includes dental and dental hygiene treatment and services provided as part of a program conducted by or through a local, county, state or federal agency, hospital, long-term care facility, public health district, dental or dental hygiene school, tribal clinic, or migrant health center; or such other oral health care program approved on an annual basis by the board and conducted by or through a public or private entity, recognized under section 501(c)(3) of the federal Internal Revenue Code, to provide free or reduced fee dental and dental hygiene services to persons who, due to age, infirmity, indigence or disability, are unable to receive regular dental and dental hygiene treatment in a private office.

(10) “General supervision” is supervision of a dental assistant or dental hygienist requiring that a dentist authorize the procedure which is carried out, but not requiring that a dentist be in the office when the authorized procedure is performed.

(11) “Indirect supervision” is supervision of a dental assistant or dental hygienist requiring that a dentist authorize a procedure and that a dentist be in the dental office while the procedure is performed by the assistant or hygienist.

History.

I.C., § 54-903, as added by 1987, ch. 30, § 3, p. 39; am. 1994, ch. 58, § 3, p. 98; am. 1997, ch. 78, § 1, p. 162; am. 2004, ch. 214,

§ 1, p. 647; am. 2004, ch. 217, § 1, p. 652; am. 2006, ch. 285, § 1, p. 874; am. 2007, ch. 93, § 1, p. 274; am. 2010, ch. 235, § 37, p. 542.

STATUTORY NOTES

Cross References.

Medical consent and natural death act, § 39-4501 et seq.

Prior Laws.

Former § 54-903, which comprised 1949, ch. 102, § 3, p. 177; am. 1967, ch. 312, § 2, p. 886; am. 1971, ch. 83, § 2, p. 181; am. 1974, ch. 13, § 87, p. 138; am. 1981, ch. 215, § 1, p. 389; am. 1986, ch. 35, § 1, p. 108, was repealed by S.L. 1987, ch. 30, § 2.

Amendments.

This section was amended by two 2004 acts

which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 214, added subsection (8).

The 2004 amendment, by ch. 217, inserted references to dental assistants in present subsections (9) and (10).

The 2006 amendment, by ch. 285, deleted “annually” preceding “licensed” in subsections (4), (5), and (6).

The 2007 amendment, by ch. 93, added subsection (3) and redesignated the subsequent subsections accordingly.

The 2010 amendment, by ch. 235, deleted

"handicap" following "infirmity" near the end in subsection (9).

Federal References.

Section 501(c)(3) of the federal Internal Revenue Code, referred to in subsection (9), is codified as 26 U.S.C.S. 501(c)(3).

Compiler's Notes.

For more on the Idaho state dental association, see <http://www.theisda.org>.

For more on the Idaho dental hygienists' association, see <http://idha.org>.

For more on the American dental association, see <http://www.ada.org>.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

54-904. Authorization for procedures performed under general supervision by dental hygienists. — A dental hygienist is authorized to practice under general supervision when:

(1) In a private office where the dental hygienist works, a licensed dentist has diagnosed the condition to be treated and determined the procedure to be performed, or has authorized a qualified dental hygienist to perform the prescribed treatment; or

(2) In an extended access oral health care program, a supervisory dentist, who is employed or retained by or is a volunteer for the program, has determined the treatment to be provided and has authorized a dental hygienist holding a license with an extended access dental hygiene endorsement to provide the prescribed treatment.

History.

I.C., § 54-904, as added by 1987, ch. 30, § 4, p. 39; am. 1994, ch. 58, § 4, p. 98; am. 2004, ch. 214, § 2, p. 647.

STATUTORY NOTES

Prior Laws.

Former § 54-904, which comprised 1949, ch. 102, § 4, p. 177; am. 1967, ch. 312, § 3, p. 886; am. 1971, ch. 83, § 3, p. 181; am. 1981, ch. 215, § 2, p. 389, was repealed by S.L. 1987, ch. 30, § 2.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 114 et seq.

54-905. Unlawful practice of dentistry. — (1) Any person who shall practice, or shall in any manner hold himself out to any other person, or to the public, as qualified or licensed to practice dentistry, or who represents himself to be a dentist, within the state of Idaho, without at the time thereof being a dentist, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both.

Each act of practice, or holding out, or representation, shall constitute a separate offense. In addition, a person found guilty of violating the provisions of this section for commercial gain may be assessed a civil penalty by the court, commensurate with the gain realized by the defendant, of up to twenty-five thousand dollars (\$25,000) for each violation of the provisions of

this section. The civil penalty collected by the court shall be remitted to the general fund of the state.

(2) Conviction under the provisions of this section shall not prevent issuance of an injunction as provided in section 54-933, Idaho Code.

History. 1949, ch. 102, § 5, p. 177; am. 1981, ch. 215, § 3, p. 389; am. 1987, ch. 30, § 5, p. 39; am. 1994, ch. 58, § 5, p. 98; am. 2003, ch. 190, § 1, p. 520.

JUDICIAL DECISIONS

Cited in: Berry v. Koehler, 84 Idaho 170, 369 P.2d 1010 (1961); Idaho Ass’n of Pub. Dental Technicians, Inc. v. Idaho Bd. of Dental Exmrs., 97 Idaho 631, 550 P.2d 134 (1976).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 109 to 113. **C.J.S.** — 70 C.J.S., Physicians and Surgeons, § 21.

54-906. Unlawful practice of dental hygiene. — (1) Any person, not a dentist, who shall practice, or shall in any manner hold himself out to any other person, or to the public, as qualified or licensed to practice dental hygiene within the state of Idaho without at the time being a licensed dental hygienist, or who performs any act, function, or service permitted a dental hygienist by this act without the supervision of a dentist as specified by the rules of the board, shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both.

Each act of practice, or holding out, or representation shall constitute a separate offense.

(2) Conviction under the provisions of this section shall not prevent issuance of an injunction as provided in section 54-933, Idaho Code.

History. 1949, ch. 102, § 6, p. 177; am. 1987, ch. 30, § 6, p. 39; am. 1994, ch. 58, § 6, p. 98.

STATUTORY NOTES

Compiler’s Notes. 903 to 54-906, 54-913, 54-924, and 54-934. The term “this act”, in subsection (1), was added to this section by S.L. 1987, ch. 30, which is currently codified as §§ 54-901, 54-903 to 54-906, 54-913, 54-924, and 54-934. The reference probably should be to “this chapter”, being chapter 9, title 54, Idaho Code.

54-907. State board of dentistry established. — There is hereby established in the department of self-governing agencies a state board of dentistry to be composed of eight (8) members, five (5) of whom shall be dentists, two (2) of whom shall be dental hygienists, and one (1) of whom shall be a consumer person familiar with health care occupations. Upon appointment by the governor, the term of office of a member of the board shall commence on the first Monday of February following his appointment

and shall continue for five (5) years, or until his successor has been named, whichever is later. A vacancy in membership of the board shall occur whenever the regular term of a member expires or when a member dies, resigns or is removed from office by the governor. Appointments to fill a vacancy occurring for some reason other than expiration of term of office shall be made for the unexpired term which is being filled. The governor may remove any member of the board from membership on the board who is found by the governor to be mentally or physically incapable of acting, or to be neglecting or refusing to act, or who ceases to have the qualifications of a member or who has failed to attend, without reasonable cause, two (2) successive meetings of the board.

History.

I.C., § 54-907, as added by 1967, ch. 312, § 4, p. 886; am. 1974, ch. 13, § 88, p. 138; am. 1981, ch. 215, § 4, p. 389; am. 1983, ch. 126,

§ 1, p. 321; am. 1990, ch. 425, § 1, p. 1174; am. 1991, ch. 147, § 2, p. 347; am. 1994, ch. 58, § 7, p. 98; am. 2002, ch. 82, § 1, p. 185.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

1949, ch. 102, § 7, p. 177, was repealed by S.L. 1967, ch. 312, § 4.

Prior Laws.

Former § 54-907, which comprised S.L.

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 9, 17.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 21.

54-908. State board of dentistry — Notice of vacancy — Nominees. — (1) Prior to the expiration of the regular term of a dentist member of the board or upon the occurrence or declaration of a vacancy in the dentist membership of the board, the governor shall notify the Idaho state dental association of that fact in writing and the association shall, within sixty (60) days thereafter, nominate three (3) persons licensed to practice dentistry to fill the vacancy and shall forward the nominations to the governor, who shall appoint from among the nominees, a person to be a member of the board to fill the vacancy. The nominees shall be selected in a manner as shall be determined by the rules and regulations of the association. For the purposes of nominations and appointments, the state shall be divided by the association into four (4) components and nominations and appointments to the board shall be made in such a manner that each component shall be represented on the board by one (1) dentist member. The fifth dentist member of the board shall be a member at large who may reside in any of the four (4) components. If the association shall fail to furnish to the governor the names of nominees to fill vacancies within the time provided, the governor may appoint any dentist qualified for membership to fill the vacancy. If the vacancy is in the term of a member from one of the four (4) components, the appointee shall reside within the component.

(2) Prior to the expiration of the regular term of a dental hygienist member of the board or upon the occurrence or declaration of a vacancy in

the dental hygienist membership of the board, the governor shall notify the Idaho dental hygienists' association of that fact in writing and the association shall within sixty (60) days thereafter, nominate three (3) persons licensed to practice dental hygiene to fill the vacancy and shall forward the nominations to the governor, who shall appoint one (1) of the nominees to be a member of the board. The nominees shall be selected in a manner as shall be determined by the rules and regulations of the dental hygienists' association. For the purposes of nominations and appointments, the state shall be divided by the association into two (2) components and nominations and appointments to the board shall be made in such a manner that each component shall be represented on the board by one (1) dental hygienist member. If the dental hygienists' association fails to furnish the names of nominees within the time provided, the governor may appoint any qualified dental hygienist to fill the vacancy. If the vacancy is in the term of a member from one (1) of the two (2) components, the appointee shall reside within the component.

(3) The governor shall appoint any qualified person as a consumer member to the board, prior to the first Monday of February in the year the term of office of the consumer member shall expire or upon the vacancy of office of the consumer member.

History.

I.C., § 54-908, as added by 1967, ch. 312, § 5, p. 886; am. 1981, ch. 215, § 5, p. 389; am. 1983, ch. 126, § 2, p. 321; am. 1986, ch. 35,

§ 2, p. 108; am. 1990, ch. 425, § 2, p. 1174; am. 1991, ch. 147, § 3, p. 347; am. 1994, ch. 58, § 8, p. 98.

STATUTORY NOTES

Prior Laws.

Former § 54-908, which comprised S.L. 1949, ch. 102, § 8, p. 177, was repealed by S.L. 1967, ch. 312, § 5.

For more on the Idaho dental hygienists' association, see <http://idha.org>.

Compiler's Notes.

For more on the Idaho state dental association, see <http://www.theisda.org>.

54-909. Board of dentistry — Qualifications of members. — Each dentist and each dental hygienist member of the board shall hold a current, active Idaho license and shall be a resident of the state of Idaho. The consumer member of the board must be a resident of the state of Idaho and shall be representative of the public consumers of dental care services.

History.

I.C., § 54-909, as added by 1967, ch. 312, § 6, p. 886; am. 1981, ch. 215, § 6, p. 389; am.

1983, ch. 126, § 3, p. 321; am. 1991, ch. 147, § 4, p. 347; am. 1994, ch. 58, § 9, p. 98.

STATUTORY NOTES

Prior Laws.

Former § 54-909, which comprised S.L. 1949, ch. 102, § 9, p. 177; am. 1957, ch. 81,

§ 2, p. 131, was repealed by S.L. 1967, ch. 312, § 6.

54-910. State board of dentistry fund — Creation of. — All fees of any kind collected under the provisions of this act shall be deposited with the state treasury to the credit of a separate fund to be known as the state board of dentistry fund and all money that comes into this fund is appropriated to carry out the purposes and objects of this act, and to pay all costs and expenses incurred in connection with this act. Such moneys shall be paid out upon warrants drawn by the state controller upon presentation of proper vouchers approved by the state board of dentistry or its administrator acting within the administrator's delegated authority. Such claims and vouchers shall be examined by the board of examiners as are other claims against the state. Moneys paid from this fund are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code (Standard Travel Pay and Allowance Act of 1949).

History.

I.C., § 54-910, as added by 1967, ch. 312, § 7, p. 886; am. 1994, ch. 58, § 10, p. 98; am. 1994, ch. 180, § 96, p. 420.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.

Prior Laws.

Former § 54-910, which comprised S.L. 1949, ch. 102, § 10, p. 177, was repealed by S.L. 1967, ch. 312, § 7.

Amendments.

This section was amended by two 1994 acts — ch. 58, § 10, effective July 1, 1994, and ch. 180, § 96, effective contingently January 2, 1995 [see effective dates note, below] — which do not appear to conflict and have been compiled together.

The 1994 amendment, by ch. 58, § 10, in the first sentence substituted “all money that comes into this fund is appropriated to carry out” for “all such moneys as may hereafter come into such fund are hereby appropriated to carrying out”; at the end of the first sentence substituted “with this act” for “there-with.”; deleted the former second sentence which read, “No other state funds shall be expended for the purposes of this act provided that funds collected hereunder shall be immediately available in the biennium 1967-68, the provisions of the budget law notwithstanding.”; and in the present second sentence

substituted “administrator” for “executive secretary” and “the administrator’s” for “his”.

The 1994 amendment, by ch. 180, § 96 in the present second sentence substituted “controller” for “auditor”.

Compiler's Notes.

The term “this act”, in the first sentence, was added to this section by S.L. 1967, Chapter 312 (first two instances) and S.L. 1994, chapter 58 (third instance), which, combined, are currently codified as §§ 54-901 to 54-916, 54-917 to 54-919, 54-921 to 54-925, and 54-932 to 54-934. The reference probably should be to “this chapter”, being chapter 9, title 54, Idaho Code.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 96 of S.L. 1994, ch. 180 became effective January 2, 1995.

54-911. Board of dentistry — Organization — Meetings — Expenses — Per diem. — The board of dentistry shall select from its dentist members a chairman who shall serve at the pleasure of the board. The board may meet at stated times, and shall meet upon the call of its chairman or a majority of the members. It shall keep minutes of its meetings and actions thereat. Five (5) members, three (3) of whom must be dentists and one (1) of

whom must be a nondentist, shall constitute a quorum, and the vote of the majority of the members present at a meeting at which a quorum is present shall determine the action of the board.

Out of any appropriation applicable to the administration of this act, each member of the board shall be compensated as provided by section 59-509(n), Idaho Code.

History.

1949, ch. 102, § 11, p. 177; am. 1963, ch. 55, § 1, p. 219; am. 1967, ch. 312, § 8, p. 886; am. 1976, ch. 177, § 1, p. 641; am. 1980, ch. 247,

§ 56, p. 582; am. 1981, ch. 215, § 7, p. 389; am. 1991, ch. 147, § 5, p. 347; am. 1994, ch. 58, § 11, p. 98; am. 1996, ch. 237, § 1, p. 766.

STATUTORY NOTES

Compiler's Notes.

The term "this act", in the second paragraph, was added to this section by S.L. 1949, chapter 102, which is codified as §§ 54-901, 54-902, 54-905, 54-906, 54-911 to 54-916, 54-917 to 54-919, 54-921 to 54-925, 54-930, 54-932, and 54-933. The reference probably

should be to "this chapter", being chapter 9, title 54, Idaho Code.

Effective Dates.

Section 2 of S.L. 1976, ch. 177 declared an emergency. Approved March 19, 1976.

54-912. Board of dentistry — Powers and duties. — The board shall have the following powers and duties:

(1) To ascertain the qualifications and fitness of applicants to practice dentistry, a dental specialty or dental hygiene; to prepare, conduct and grade qualifying examinations; to require and accept passing results of written and clinical examinations from approved dental and dental hygiene testing organizations; to issue in the name of the board a certificate of qualification to applicants found to be fit and qualified to practice dentistry or dental hygiene.

(2) To prescribe rules for a fair and wholly impartial method of licensure and examination of applicants to practice dentistry, a dental specialty or dental hygiene.

(3) To define by rule what shall constitute accepted and approved schools, colleges, institutions, universities or departments thereof for the teaching of dentistry or dental hygiene and to determine, accept and approve those that comply therewith.

(4) To promulgate other rules required by law or necessary or desirable for its enforcement and administration; to define by rule the terms unprofessional conduct or practices injurious to the public as the terms are used in section 54-924, Idaho Code, to furnish applications, certificates, licenses and other necessary forms.

(5) To inspect or cause to be inspected the offices or operating rooms of all persons licensed under this chapter.

(6) Upon its own motion or upon any complaint, to initiate and conduct investigations on all matters relating to the practice of dentistry or dental hygiene and to conduct hearings or proceedings on its own or through its designated hearing officer, to revoke, suspend or otherwise condition certificates of qualification or licenses of persons practicing dentistry or dental hygiene and, on such terms as the board shall deem appropriate, to revoke,

suspend, or otherwise condition such licenses, provided such hearings and proceedings shall be had in conformance with the provisions of chapter 52, title 67, Idaho Code. Final decisions of the board shall be subject to judicial review as provided in chapter 52, title 67, Idaho Code.

(7) The board, its designated hearing officer, or representative shall have power to administer oaths, the power to engage in discovery as provided in the Idaho rules of civil procedure and chapter 52, title 67, Idaho Code, including, but not limited to, the power to take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of witnesses and the production of books, records and papers as it may desire at any hearing before it of any matter which it has authority to investigate, and for that purpose the board or its designated hearing officer may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where the witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases and shall be paid from the state board of dentistry fund in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court, or any judge thereof, of any county in this state in which the disobedience, neglect or refusal occurs, upon application by the board to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or for refusal to testify. The licensed person accused in the proceedings shall have the same right of subpoena upon making application to the board.

(8) The board shall establish an office and may appoint an executive director who need not be a member of the board or a person licensed to practice dentistry or dental hygiene, and may employ other personnel, including attorneys and hearing officers, as may be necessary to assist the board. The board shall prescribe the duties of the executive director and these duties shall include the preparation of all papers and records under law for the board, and shall include enforcement activities as to the board may from time to time appear advisable, and the executive director shall act for and on behalf of the board in such manner as the board may authorize, keep records, property and equipment of the board and discharge other duties as the board may from time to time prescribe. The compensation of the executive director or other personnel shall be determined by the board and the executive director shall be bonded to the state in the time, form and manner prescribed in chapter 8, title 59, Idaho Code.

(9) To report annually to the associations on the status of the state board of dentistry account [fund] and furnish the associations a written report on all receipts and expenditures during the preceding year.

(10) Provide, by rule, for reasonable fees for administrative costs and assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee has been found to be in violation of this chapter.

History.

1949, ch. 102, § 12, p. 177; am. 1967, ch. 312, § 9, p. 886; am. 1971, ch. 136, § 34, p. 522; am. 1974, ch. 13, § 89, p. 138; am. 1986,

ch. 35, § 3, p. 108; am. 1991, ch. 147, § 6, p. 347; am. 1993, ch. 216, § 59, p. 587; am. 1994, ch. 58, § 12, p. 98; am. 2000, ch. 40, § 1, p. 79; am. 2003, ch. 160, § 1, p. 451.

STATUTORY NOTES

Cross References.

State board of dentistry fund, § 54-910.

Compiler's Notes.

Although subsection (4) reads, "to define by rule the terms unprofessional conduct or practices injurious to the public," neither of those terms appear in § 54-924. See § 54-924(8) which reads, "Engage in unprofessional, unethical or immoral conduct, as defined by board rules."

The bracketed insertion in subsection (9) was added by the compiler to correct the name of the referenced fund. See § 54-910.

Effective Dates.

Section 87 of S.L. 1971, ch. 136 declared an emergency. Approved March 18, 1971.

Section 2 of S.L. 2000, ch. 40 provided that the act shall be in full force and effect on and after July 1, 2000.

JUDICIAL DECISIONS

ANALYSIS

Civil injunctions.

Dental standard of care.

Discretionary powers of board.

Civil Injunctions.

Where none of the plaintiff-dental technicians were involved in or threatened by a contempt proceeding for breaching a civil injunction secured by the board, the supreme court would not consider abstract question raised by dental technicians that the practice of the board in sending investigators to entrap dental technicians into violating injunction enjoining the technicians from practice of dentistry was an attempt by the board to circumvent criminal procedure and; thus, was an abuse of the board's authority. *Idaho Ass'n of Pub. Dental Technicians, Inc. v. Idaho Bd. of Dental Exmrs.*, 97 Idaho 631, 550 P.2d 134 (1976).

Dental Standard of Care.

By having the powers to license and disci-

pline dentists pursuant to this section and §§ 54-918 and 54-924, the board of dentistry has the authority to establish a minimum standard of care for practicing dentistry anywhere in Idaho; the standard of care anywhere in Idaho cannot be below the standard required to have the fitness to be licensed. *Grover v. Smith*, 137 Idaho 247, 46 P.3d 1105 (2002).

Discretionary Powers of Board.

The determination by the board of the qualifications of an applicant who takes an examination requires the board to bring to bear its professional knowledge and to exercise professional and official discretion. *Sherburne v. Board of Dental Exmrs.*, 13 Idaho 105, 88 P. 762 (1907).

54-913. Certificates — Licenses — Records. — (1) All certificates of qualification to practice dentistry or dental hygiene, and all licenses shall be issued by the board in the name of the board, with the seal attached.

(2) The board shall keep a record of all applicants for licensure to qualify as a dentist or dental hygienist, of applicants rejected on application or examination with the reason for rejection, of certificates of qualification and of licenses issued, and of dentists and dental hygienists.

History.

1949, ch. 102, § 13, p. 177; am. 1967, ch. 312, § 10, p. 886; am. 1974, ch. 13, § 90, p.

138; am. 1987, ch. 30, § 7, p. 39; am. 1994, ch. 58, § 13, p. 98; am. 2006, ch. 285, § 2, p. 874.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 285, deleted "annual" preceding "licenses" throughout the section.

Effective Dates.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

JUDICIAL DECISIONS**Nature of Right to Practice.**

Right to practice dentistry is valuable personal right in which, under protection of con-

stitution and laws, one is entitled to be protected and secured. *Abrams v. Jones*, 35 Idaho 532, 207 P. 724 (1922).

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

54-914. Dentists and dental hygienists previously qualified. — All persons prior to the effective date of this act who had been found qualified to practice dentistry or dental hygiene in this state and who on the effective date of this act were licensed as dentists or dental hygienists in this state shall be deemed to be qualified and licensed dentists or dental hygienists under this act subject to the provisions of this act.

History.

1949, ch. 102, § 14, p. 177; am. 1967, ch. 312, § 11, p. 886; am. 1994, ch. 58, § 14, p. 98.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" was added to this section by S.L. 1949, Chapter 102, which is codified as §§ 54-901, 54-902, 54-905, 54-906,

54-911 to 54-916, 54-917 to 54-919, 54-921 to 54-925, 54-930, 54-932, and 54-933. The effective date of S.L. 1949, chapter 102 was February 26, 1949.

54-915. Qualifications required for dentist or dental hygienist licensure. — No person hereafter shall be eligible for licensure to practice dentistry or dental hygiene in this state unless the applicant:

(1) Is of good moral character and has not pled guilty to or been convicted of any felony, or of any misdemeanor involving moral turpitude, unless the person demonstrates that he has been sufficiently rehabilitated to warrant the public trust;

(2) Shall, for dentistry, have successfully completed the course of study in dentistry, and graduated and received a degree of doctor of dental surgery, doctor of dental medicine, or equivalent degree from a dental school accepted and approved by the board;

(3) Shall, for dental hygiene, have successfully completed the course of study in dental hygiene, and received a degree from a dental hygiene school accepted and approved by the board;

(4) Shall, for dentistry and dental hygiene, pass the examinations provided for in section 54-918, Idaho Code.

History.

1949, ch. 102, § 15, p. 177; am. 1963, ch. 56, § 1, p. 220; am. 1967, ch. 312, § 12, p. 886;

am. 1991, ch. 15, § 1, p. 32; am. 1991, ch. 147, § 7, p. 347; am. 1994, ch. 58, § 15, p. 98; am. 2003, ch. 160, § 2, p. 451.

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 49.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 21.

54-916. Application for licensure — Fee. — Any person desiring to practice dentistry, a dental specialty or dental hygiene within the state of Idaho shall make an application for licensure in dentistry, a dental specialty or dental hygiene, as the case may be, on forms furnished by the board, which forms shall call for information from the applicant as shall show his full, true name and that he possesses all the qualifications required by law for the license applied for. The application and supporting instruments as shall be required, together with payment of an application fee of not more than three hundred dollars (\$300) for dentists, the fee to be set by the rules of the board and not more than two hundred fifty dollars (\$250) for dental hygienists, the fee to be set by the rules of the board, and not more than six hundred dollars (\$600) for dental specialists, the fee to be set by the rules of the board, shall be filed with the board at a sufficient time to permit the board to investigate into the moral character of the applicant and his possession of the other qualifications for licensure. The fee shall not be refunded.

History.

1949, ch. 102, § 16, p. 177; am. 1967, ch. 312, § 13, p. 886; am. 1976, ch. 176, § 1, p.

639; am. 1986, ch. 35, § 4, p. 108; am. 1991, ch. 15, § 2, p. 32; am. 1994, ch. 58, § 16, p. 98.

54-916A. Dental hygiene applicants licensed in other states. — The board may issue a license to applicants licensed to practice dental hygiene in another state upon evidence that:

(1) The applicant is currently an active dental hygienist who holds a valid license in another state.

(2) The applicant has been licensed for at least one (1) year and the hygienist has practiced a minimum of one thousand (1,000) hours in the two (2) years immediately preceding the date of application.

(3) No disciplinary proceeding or unresolved complaint is pending at the time a license is to be issued by this state.

(4) The applicant has successfully completed a clinical examination which is at least equivalent to that required by this state, as determined by the board.

History.

I.C., § 54-916A, as added by 1992, ch. 3, § 1, p. 8; am. 1997, ch. 81, § 1, p. 191.

54-916B. Dental applicants licensed in other states. — The board may issue a license to applicants licensed to practice dentistry in another state without the examination required by section 54-915(4), Idaho Code, upon evidence that:

(1) The applicant is currently an active dentist who holds a valid unrestricted license in another state;

(2) The applicant has been in clinical practice at least five (5) years immediately preceding the date of application for a minimum of one thousand (1,000) hours in each year;

(3) The applicant has successfully completed the national board dental examination parts one (1) and two (2);

(4) The applicant has successfully completed a clinical examination which is at least equivalent to that required by this state, as determined by the board;

(5) At the discretion of the board, the applicant may be required to present case histories of patients treated by the applicant in the last five (5) years including appropriate x-rays, study models, treatment plans and treatment records;

(6) At the discretion of the board, the applicant may be required to appear for a personal interview conducted by the board;

(7) The applicant meets all other qualifications for a license in this state; and

(8) The applicant has paid the application fee as set by the board of not more than one thousand dollars (\$1,000).

History.

I.C., § 54-916B, as added by 1997, ch. 95,
§ 1, p. 224.

54-917. Allowance or rejection of applicant. — In the event the board finds that the applicant does not possess all the qualifications required for licensure, or that the application or supporting instruments contain false or misleading statements of material facts, the board shall refuse to permit the applicant to be licensed, and shall in writing so notify the applicant giving the reasons therefor. The board shall record such refusal and reasons and the date and means of notification.

History.

312, § 14, p. 886; am. 1991, ch. 147, § 8, p.
1949, ch. 102, § 17, p. 177; am. 1967, ch. 347; am. 1994, ch. 58, § 17, p. 98.

54-918. Examinations — Certificate of qualification. — (1) An applicant for licensure shall pass such examinations in dentistry and in dental hygiene as are conducted by the board. Examinations shall be written or clinical, or both, and upon such subjects in dentistry and dental hygiene as the board shall determine will thoroughly test the fitness and ability of the applicant to practice dentistry or dental hygiene. An applicant for licensure shall pass the written jurisprudence examination conducted by the board. A passing score of seventy-five percent (75%) correct shall be required on the written jurisprudence examination. A passing score of at least seventy-five percent (75%) correct shall be required on any additional

written or clinical examinations conducted by the board. It shall report and record the names of applicants who pass and of those who fail the examinations. Upon the candidate's request, the board will issue to each passing applicant in dentistry, who is qualified for Idaho licensure, a certificate of qualification to practice dentistry, and to each passing applicant in dental hygiene, who is qualified for Idaho licensure, a certificate of qualification to practice dental hygiene within the state of Idaho.

(2) In lieu of conducting written examinations other than the jurisprudence examination, the board may require and accept the results of the national board dental and dental hygiene examinations administered by the American dental association. The American dental association shall set the standards for passing the national board dental and dental hygiene examinations. In lieu of conducting clinical examinations, the board may require and accept the results of clinical examinations administered by national or regional testing organizations approved by the board. The national or regional testing organizations shall set the standards for passing or acceptable level of competency on the clinical examinations administered.

(3) Applicants who fail any examination conducted by the board shall be notified thereof in writing by the board, which shall also record the fact of failure and the date and means of notification.

(4) Written questions and answers of applicants shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless exempt from disclosure in that chapter and title, and shall be destroyed by the board after the period of one (1) year following the examination.

History. 108; am. 1990, ch. 213, § 74, p. 157; am. 1994, ch. 58, § 18, p. 98; am. 1999, ch. 30, § 14, p. 312, § 15, p. 886; am. 1986, ch. 35, § 5, p. 41; am. 2003, ch. 160, § 3, p. 451.

STATUTORY NOTES

Compiler's Notes.
For more on the American dental association, see <http://www.ada.org>.

JUDICIAL DECISIONS

Dental Standard of Care. where in Idaho; the standard of care anywhere in Idaho cannot be below the standard required to have the fitness to be licensed. Grover v. Smith, 137 Idaho 247, 46 P.3d 1105 (2002).
By having the powers to license and discipline dentists pursuant to this section and §§ 54-912 and 54-924, the board of dentistry has the authority to establish a minimum standard of care for practicing dentistry any-

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 19. **C.J.S.** — 70 C.J.S., Physicians and Surgeons, § 24 et seq.

54-919. Cheating. — In the event the board finds prior to the issuance of a certificate of qualification that an applicant, whether or not receiving a passing grade in the examination, has made any false statement with intent

to mislead or deceive the board or its members in or in connection with his application, or has cheated or attempted to cheat in examination, such applicant shall be denied a certificate of qualification and shall be notified in writing with the reasons, the facts and the date and means of notification shall be recorded by the board.

In the event of such finding, subsequent to the issuance of a certificate of qualification, proceedings may be maintained to revoke such certificate and any license outstanding, on such ground.

History.

1949, ch. 102, § 19, p. 177; am. 1967, ch. 312, § 16, p. 886; am. 1994, ch. 58, § 19, p. 98; am. 2006, ch. 285, § 3, p. 874.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 285, deleted "annual" preceding "license" near the end.

JUDICIAL DECISIONS

Cited in: *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1955).

54-920. Licensing — License fees — Biennial renewal of licenses — Late fees and returned checks — Classifications of licenses — Rights of licensees — Notification of change of address. — (1) Each person determined by the board as qualified for licensure under this chapter shall pay the prescribed biennial license fee to the board prior to issuance of a license. Unless otherwise specified on a license, licenses issued by the board shall be effective for the biennial licensing period specified in this section. The biennial licensing period for dental licenses shall be a two (2) year period from October 1 of each even-numbered calendar year to September 30 of the next successive even-numbered calendar year. The biennial licensing period for dental hygiene licenses shall be a two (2) year period from April 1 of each odd-numbered calendar year to March 31 of the next successive odd-numbered calendar year. Unless otherwise specified on a license, any license issued during a biennial licensing period shall be effective until the beginning date of the next successive biennial licensing period and the board may prorate the amount of the license fee from the date of issuance of the license until the beginning date of the next applicable biennial licensing period at the discretion of the board. A license issued by the board shall expire unless renewed in the manner specified in this section.

(2) The nonrefundable biennial license fees shall be fixed by the board, but shall not exceed the following amounts:

- (a) Four hundred dollars (\$400) for a dentist with an active status;
- (b) Two hundred dollars (\$200) for a dentist with an inactive status;
- (c) Two hundred twenty dollars (\$220) for a dental hygienist with an active status;
- (d) One hundred twelve dollars (\$112) for a dental hygienist with an inactive status;

- (e) Four hundred dollars (\$400) for a dentist with a specialist status; or
- (f) Twenty dollars (\$20.00) for a dentist or dental hygienist with a retirement status.

(3) A license issued by the board shall be renewed as prescribed in this section. Prior to the expiration of the effective period of a license, the board shall mail a renewal application to the licensee's address of record on file with the board. To renew a dental license, each licensee shall submit a properly completed renewal application and the appropriate biennial license fee to the board prior to September 30 of every even-numbered calendar year. To renew a dental hygiene license, each licensee shall submit a properly completed renewal application and the appropriate biennial license fee to the board prior to March 31 of each odd-numbered calendar year. Each licensee determined by the board as qualified for renewal of a license shall be issued a license for the applicable biennial licensing period.

(4) The following procedure shall be followed by the board for all licensees who fail to submit a properly completed renewal application and appropriate biennial license fee on or before the expiration of the effective period of a license. A license that expires by reason of a licensee's failure to satisfy the renewal requirements shall not be considered to be a disciplinary action by the board and shall result in the termination of the licensee's right to practice dentistry or dental hygiene in the state.

(a) The board shall mail a notice of failure to renew a license to the licensee's address; and

(b) The notice of failure to renew a license shall advise the licensee that he has failed to comply with the board's license renewal requirements and that a failure to submit a properly completed renewal application, the appropriate biennial license fee and a fifty dollar (\$50.00) late fee within thirty (30) days of the date upon which the board's notice was mailed shall result in the expiration of his license.

(5) Any person who delivers a check or other payment to the board that is returned to the board unpaid by the financial institution upon which it was drawn shall pay to the board as an administrative cost, in addition to any other amount owing, the amount of fifty dollars (\$50.00). Following notification by the board of the returned check or other payment, the person shall make payment of all moneys owing to the board by certified check or money order within thirty (30) days of the date of notification. A failure to submit the necessary remittance within the thirty (30) day period may result in the expiration of a license or constitute grounds for the board to deny, cancel, suspend or revoke a license.

(6) The board of dentistry may issue different classes of licenses as defined in this subsection.

(a) The term "license with active status" means a license issued by the board to a qualified person who is authorized to be an active practitioner of dentistry or dental hygiene in the state of Idaho. A person's right to be issued and maintain a license with active status shall not be affected by any absence, not exceeding two (2) years, from active practice in Idaho by reason of illness or vacation. A person's right to be issued and maintain a license with active status shall not be affected by any absence from active

practice in Idaho for any period while serving on active duty in the armed forces of the United States, while employed in the United States public health service or United States veterans administration, or while enrolled in board-approved postgraduate educational courses, either within or without the state of Idaho. Each applicant or licensee requesting an active status license must state that he intends to fulfill the requirements for that status.

(b) The term "license with an inactive status" means a license issued by the board to a qualified person who is not authorized to be an active practitioner of dentistry or dental hygiene in the state of Idaho. A person issued a license with an inactive status is not entitled to practice dentistry or dental hygiene in the state of Idaho.

(c) The terms "license with special status" and "license with provisional status" mean licenses issued by the board to a qualified person on a provisional, conditional, restricted or limited basis under the terms of which the licensee is authorized to practice dentistry or dental hygiene in the state of Idaho subject to conditions, limitations and requirements imposed by the board. The conditions, limitations and requirements imposed by the board may include, but are not limited to, a limitation on the effective period of the license, a requirement that specific conditions must be fulfilled in order for the license to remain effective, a requirement that specified education, examinations and skills testing be successfully completed during the effective period of the license, a restriction on the scope of permissible services that the licensee is authorized to perform, a restriction on the type of patients for whom treatment may be rendered and a restriction on the locations at which the licensee can perform authorized services.

(d) The term "license with retirement status" means a license issued to a person who was previously licensed as a dentist or dental hygienist in Idaho who no longer intends to practice dentistry or dental hygiene. A license with retirement status does not permit the holder to practice dentistry or dental hygiene in the state of Idaho. A license with retirement status cannot be converted to a license with active or inactive status other than by filing an application for licensure and qualifying as required of a first time applicant.

(7)(a) The board may issue a license with active status to any qualified applicant or qualified licensee who is an active practitioner of dentistry or dental hygiene in the state of Idaho or who signifies to the board in writing that, upon issuance of an initial license or renewal of a biennial license, he intends to be an active practitioner in this state within two (2) years. Renewal of a license with active status requires compliance with requirements as determined by the board.

(b) The board may issue a license with inactive status to any qualified person who fulfilled the licensure requirements but, for any reason, is not eligible for a license with active status. Renewal of a license with inactive status requires compliance with requirements as determined by the board.

(c) The board may issue a license with provisional status or special status to any person who fulfills, or substantially fulfills, the applicable licensure

requirements when the board, acting in its discretion, determined that special circumstances existed which, for the protection of the public health, safety and welfare, required that specific conditions, restrictions or limitations be imposed on the license. A license with special status or provisional status entitles the holder thereof to practice dentistry or dental hygiene in the state of Idaho subject to the conditions, restrictions and limitations specifically determined by the board and for the period of time prescribed. A provisional license is effective for the period specified by the board and may not be renewed. The board shall develop rules to include definitions, application and renewal requirements, limitations of practice and other conditions regarding provisional and special status licenses.

(d) The board may convert a license with inactive status to a license with active status in the event the holder pays the license fee prescribed for licenses with active status and submits to the board satisfactory evidence of:

(i) Compliance with the requirements of this chapter and all rules promulgated under the provisions of this chapter;

(ii) Evidence of good moral character and good professional conduct; and

(iii) Evidence of one thousand (1,000) hours of clinical practice of dentistry or dental hygiene during the previous two (2) years or full-time employment as a dental or dental hygiene instructor at an American dental association accredited dental or dental hygiene school.

(e) Persons unable to otherwise fully meet the requirements for conversion of an inactive status license to an active status license may convert their license upon board approval.

(8) Each person licensed under this chapter shall notify the board in writing of any change in the person's name or address of record within thirty (30) days after the change has taken place.

History.

I.C., § 54-920, as added by 2006, ch. 285, § 5, p. 874.

STATUTORY NOTES

Prior Laws.

Former § 54-920, which comprised I.C., § 54-920, as added by 1981, ch. 215, § 9, p. 389; am. 1986, ch. 35, § 6, p. 108; am. 1987, ch. 30, § 8, p. 39; am. 1990, ch. 425, § 3, p. 1174; am. 1991, ch. 15, § 3, p. 32; am. 1991, ch. 147, § 9, p. 347; am. 1994, ch. 58, § 20, p. 98, was repealed by S.L. 2006, ch. 285, § 4.

Another former § 54-920, which comprised 1949, ch. 102, § 20, p. 177; am. 1965, ch. 164, § 5, p. 317; am. 1976, ch. 176, § 2, p. 639, was repealed by S.L. 1981, ch. 215, § 8.

Compiler's Notes.

For more on the American dental association, see <http://www.ada.org>.

54-921. Reinstatement. — A person whose license has expired for failure to fully comply with the board's license renewal requirements may have such qualification reinstated by filing an application for licensure showing possession by him of the qualifications required of a first applicant for licensure, and additionally the fact, time and cause of cancellation of his

previous qualification. He shall pay to the board an application fee in the same amount as prescribed by the board under the provisions of section 54-916, Idaho Code, which fee shall not be refunded. If found qualified as in the case of a first applicant for licensure, he may be required to take and pass such examinations as, in the discretion of the board, shall show that he possesses the knowledge and skill requisite to the practice of dentistry or dental hygiene as the case may be. In the event he passes such examinations there shall be issued to him a certificate of qualification.

History.

1949, ch. 102, § 21, p. 177; am. 1967, ch. 312, § 18, p. 886; am. 1981, ch. 215, § 10, p.

389; am. 1994, ch. 58, § 21, p. 98; am. 2003, ch. 160, § 4, p. 451; am. 2006, ch. 285, § 6, p. 874.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 285, in the first sentence, substituted "has expired for failure to fully comply with the board's license

renewal requirements" for "has been suspended or revoked for nonpayment of the required license fee."

54-922. Display of license. — No person shall practice dentistry or dental hygiene unless he either has on display in his office an unrevoked and unsuspended license for the time period in which he shall practice or has the same immediately producible upon request.

History.

1949, ch. 102, § 22, p. 177; am. 1967, ch.

312, § 19, p. 886; am. 1994, ch. 58, § 22, p. 98; am. 2006, ch. 285, § 7, p. 874.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 285, deleted "annual" preceding "license" in the section

heading and in the section text, and substituted "time period" for "year."

54-923. Revocation for convictions of crime. — A certificate or other evidence of qualification and right to practice dentistry, a dental specialty or dental hygiene, and a license, may be revoked by the board whenever it shall be shown to the board that the holder of such certificate or other evidence of qualification, right to practice or license has been convicted of a felony, or of a misdemeanor involving moral turpitude, whether such conviction shall have occurred before or after qualification, or accrual of such right, or the issuance of such certificate or other evidence of qualification, or of such license.

History.

1949, ch. 102, § 23, p. 177; am. 1967, ch. 312, § 20, p. 886; am. 1981, ch. 215, § 11, p.

389; am. 1986, ch. 35, § 7, p. 108; am. 1994, ch. 58, § 23, p. 98; am. 2006, ch. 285, § 8, p. 874; am. 2007, ch. 93, § 2, p. 274.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 285, in the first paragraph, deleted "annual" preceding the first and last occurrences of "license."

The 2007 amendment, by ch. 93, substituted "convicted of a felony" for "finally adjudged guilty of a felony" and "conviction shall have occurred" for "final judgment shall have

been entered," and deleted "unless the person demonstrates that he has been sufficiently rehabilitated to warrant the public trust" from the end, and deleted the last paragraph which formerly read: "A copy of the judgment of conviction, certified to be correct and final

by the clerk or judge of the court wherein conviction was had, shall be conclusive evidence of such conviction, and upon the filing thereof with the board, the revocation shall be entered without further proceedings."

JUDICIAL DECISIONS

Grounds for Revocation.

In action to enjoin operator of dental repair laboratory from practicing dentistry, where the trial court did not enjoin practicing dentistry but did enter decree perpetually restraining defendant from the doing of three specific acts connected with the fitting of dentures, and transcript established that he did some of the acts defined as practicing

dentistry, cause was remanded and trial court directed to make findings of fact specifying the particular forbidden acts the evidence showed the defendant was doing, to enter permanent injunction restraining the commission of such acts and to restrain him from practicing dentistry. *State ex rel. Wolfley v. Oster*, 75 Idaho 472, 274 P.2d 829 (1954).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, §§ 82-86.

A.L.R. — Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice. 19 A.L.R.6th 577.

54-924. Other grounds of refusal, revocation or suspension of dentists — Probation agreements. — The board may refuse to issue or renew a dental license, or may revoke, suspend, place on probation, reprimand or take other disciplinary action with respect to a dental license as the board may deem proper, including administrative penalties not to exceed ten thousand dollars (\$10,000) per violation and assessment of the costs of disciplinary proceedings in the event a dentist shall:

(1) Intentionally misstate, or fail fully to disclose, a fact material to determination of fitness and qualification in an application for licensure to practice dentistry, or cheat in an examination to practice dentistry; or procure a certificate or finding of qualification to practice dentistry or subsequently a license by false, fraudulent or deceitful means or in any other name than his own true name; or

(2) Practice dentistry under any name other than his own true name except as authorized by the provisions of the professional service corporation act; or

(3) Practice or in any manner or by any means or at any place hold out or represent himself as practicing dentistry in or under the name of, or as a member, representative, agent or employee of, or in connection with, any company, association, or corporation, or under any trade, fictitious or business name except as authorized by the provisions of the professional service corporation act; or

(4)(a) Make, or cause to be made, or assist in making, any fraudulent, false, or misleading statement as to his own, or an employee's, associate's, or other dentist's or dental hygienist's skill or lack of skill, or method of practice; or

- (b) Claim to practice dentistry without causing pain; or
- (c) Claim superiority over other dentists; or
- (d) Publish, advertise, or circulate reports, letters, certificates, endorsements, or evidence of cures or corrections of dental conditions by such dentist, his employee or associate by reason of his or their skill, experience, or ability or of his or their use of any system, method, technique, device, drug, medicine, material, manipulation or machine; or
- (e) Advertise the use of, or use, any system, method, technique, device, drug, medicine, material or machine, which is either falsely advertised or misnamed; or

(5) Employ any person to obtain patronage, or call or seek to call, the attention of the public to him, his office, his skill, or his practice, by public exhibition, use, reproduction, or representation of specimens or samples, of dental work, or by demonstrations in public. This shall not apply to teaching in dental or dental hygiene schools, or demonstrations or exhibitions before meetings of other dentists or dental hygienists; or

(6) Use intoxicants or drugs to such a degree as to render him unfit to practice; or

(7) Commit malpractice, that is, to provide dental care which fails to meet the standard of dental care provided by other qualified dentists in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public; or

(8) Engage in unprofessional, unethical or immoral conduct, as defined by board rules; or

(9) Advertise in such way as to deceive or defraud, or probably deceive or defraud, the public or patrons; or

(10) Employ or permit any person not a dentist to practice dentistry, or any person not a dentist or dental hygienist to practice dental hygiene, in his office or under his control or direction; or

(11) Fail, neglect or refuse to keep his office or equipment, or otherwise conduct his work in accordance with current state and federal laws, rules and regulations; or

(12) Violate any other provisions of law or rules adopted by the board; or

(13) Falsely identify himself to the public as a specialist in a specialty area of dentistry as defined by rule.

History.

1949, ch. 102, § 24, p. 177; am. 1963, ch. 336, § 1, p. 963; am. 1967, ch. 312, § 21, p. 886; am. 1971, ch. 83, § 4, p. 181; am. 1981,

ch. 215, § 12, p. 389; am. 1986, ch. 35, § 8, p. 108; am. 1987, ch. 30, § 9, p. 39; am. 1994, ch. 58, § 24, p. 98; am. 2006, ch. 285, § 9, p. 874.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 285, deleted "annual" preceding "license" in subsection (1).

referred to in subsections (2) and (3), is codified as § 30-1301 et seq.

Compiler's Notes.

The professional service corporation act,

Effective Dates.

Section 5 of S.L. 1971, ch. 83 declared an emergency. Approved March 8, 1971.

JUDICIAL DECISIONS

Dental Standard of Care.

By having the power to license and discipline dentists pursuant to §§ 54-912, 54-918 and this section, the board of dentistry has the authority to establish a minimum stan-

dard of care for practicing dentistry anywhere in Idaho; the standard of care anywhere in Idaho cannot be below the standard required to have the fitness to be licensed. *Grover v. Smith*, 137 Idaho 247, 46 P.3d 1105 (2002).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 71 et seq.

A.L.R. — Professional incompetency as ground for disciplinary measure against physician or dentist. 28 A.L.R.3d 487.

Drugs, wrongful or excessive prescription as ground for revocation or suspension of license. 22 A.L.R.4th 668.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Expert evidence in proceeding for revocation of license, admissibility and necessity of. 74 A.L.R.4th 969.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice. 19 A.L.R.6th 577.

54-925. Other grounds of revocation or suspension of dental hygienists — Probation agreements. — The certificate or other evidence of qualification, and the right to practice dental hygiene and the license of any dental hygienist may be revoked, suspended or otherwise conditioned by the board in the event such dental hygienist shall do, in respect to the practice of dental hygiene, or as a dental hygienist, any of the things or acts set forth in section 54-924, Idaho Code; Provided, however, that notwithstanding any provisions of section 54-924, Idaho Code, a dental hygienist shall not practice otherwise than as provided in section 54-904, Idaho Code, and his doing so shall be an additional ground for revocation, suspension, or other conditions as determined by the board.

The board may refuse to issue or renew a dental hygiene license, or may revoke, suspend, place on probation, reprimand or take other disciplinary action with respect to a dental hygiene license as the board may deem proper, including administrative penalties not to exceed five thousand dollars (\$5,000) per violation and assessment of the costs of disciplinary proceedings.

History. 1949, ch. 102, § 25, p. 177; am. 1967, ch. 312, § 22, p. 886; am. 1994, ch. 58, § 25, p. 98; am. 2006, ch. 285, § 10, p. 874.

STATUTORY NOTES

Amendments. The 2006 amendment, by ch. 285, deleted "annual" preceding "license" in the first paragraph.

54-926. Misdemeanors. [Repealed.]

STATUTORY NOTES

Compiler's Notes. This section, which comprised 1949, ch. 102, § 26, p. 177 was repealed by S.L. 1994, ch. 58, § 26.

54-927 — 54-929. Revocation or suspension — Procedure — Counsel — Depositions — Witnesses — Subpoenas — Appeal. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1949, ch. 102, §§ 27 to 29, p. 177, were repealed by

S.L. 1967, ch. 312, § 23. For present law see § 54-912.

54-930. Exceptions to application of act. — This act shall not be construed as prohibiting a physician or surgeon, duly authorized to practice as such in this state, from treating diseases of the mouth or performing operations in oral surgery; nor as prohibiting persons authorized by the laws of another state, territory or country to practice dentistry or dental hygiene therein, or persons teaching in approved dental or dental hygiene schools, from making clinical demonstrations before meetings of dentists or dental hygienists in Idaho nor as prohibiting any person from performing merely mechanical work upon inert matter in a dental laboratory, nor to prohibit students in approved dental or dental hygiene schools from practicing dentistry or dental hygiene therein as part of their training or education.

History.

1949, ch. 102, § 30, p. 177; am. 1963, ch. 56, § 2, p. 220.

STATUTORY NOTES

Compiler's Notes.

The term "this act", in the first sentence, was added to this section by S.L. 1949, Chapter 102, which is codified as §§ 54-901, 54-902, 54-905, 54-906, 54-911 to 54-916, 54-917

to 54-919, 54-921 to 54-925, 54-930, 54-932, and 54-933. The reference probably should be to "this chapter", being chapter 9, title 54, Idaho Code.

JUDICIAL DECISIONS

ANALYSIS

Dental technicians.

Technicians' limitations.

Dental Technicians.

The 1953 amendment of § 54-901 was declared unconstitutional insofar as it effected a doing away with vested rights of dental mechanics or technicians by prohibiting the following of a chosen occupation recognized as an independent calling. *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1955).

Where the acts done by the dental technician were manifestly within the rubric of the pertinent statutory prescriptions defining the practice of dentistry, trial court was correct in the issuance of permanent injunction enjoining the dental technician from doing those acts. *Board of Dentistry v. Barnes*, 94 Idaho 486, 491 P.2d 1258 (1971).

Technicians' Limitations.

Section 54-901 prohibits the performance of services in the areas of examination for diagnosis, diagnosing and treatment by technicians, such as the prohibition of the use of carbon paper and indicator paste in their work, such prohibition extending to the use of such indicators as concerns aspects of examination diagnosis, diagnosing or treatment by the technician, the intent of § 54-901 being made apparent, that of limitation of the field of dentistry to those qualified by established standards. *Berry v. Koehler*, 86 Idaho 225, 384 P.2d 484 (1963).

The definition of the practice of dentistry places a fence around the technician; he could

do the mechanical work upon the appliance but the results of his work, such as, whether the appliance fits, must not require his diagnosis, his diagnosing or his treatment; the decision as to whether the appliance is satisfactory being strictly up to the wearer him-

self. *Berry v. Koehler*, 86 Idaho 225, 384 P.2d 484 (1963).

Cited in: *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1961).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 19, 24.

54-931. Dentists exempt from jury service. [Repealed.]

STATUTORY NOTES

Compiler's Notes. ch. 102, § 31, p. 177, was repealed by S.L. 1949, ch. 103, § 1.

54-932. Lost or destroyed certificates or licenses. — If the certificate of qualification or the license of a dentist or dental hygienist be lost or destroyed, and such fact appear by affidavit of such dentist or dental hygienist filed with the board together with a fee of ten dollars (\$10.00), the board shall issue a duplicate.

History. 1949, ch. 102, § 32, p. 177; am. 1967, ch. 312, § 24, p. 886; am. 1991, ch. 15, § 4, p. 32; am. 2006, ch. 285, § 11, p. 874.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 285, deleted "annual" preceding "license."

54-933. Injunction — Procedure. — The board or any resident citizen may maintain an action in equity in the name of the state of Idaho to perpetually enjoin any person from persisting in the doing of any acts constituting a violation of this act. Such action shall be brought in the district court of the county in which such acts or some of them are claimed to have been or are being committed, by filing a verified complaint setting forth said acts. The court, or a judge thereof at chambers, if satisfied from such complaint or by affidavits that the acts complained of have been or are being committed and will probably be persisted in, may issue a temporary writ, without notice or bond, enjoining the defendant from the commission of any such act or acts pending final disposition of the cause. The cause shall proceed as in other cases for injunction. If at the trial the commission of said act or acts by the defendant be established, and the court further find[s] that it is probable that defendant will continue therein or in similar violations, the court, or a judge thereof at chambers, shall enter a decree perpetually enjoining said defendant from thereafter committing said or similar acts.

History.

1949, ch. 102, § 33, p. 177; am. 1967, ch. 312, § 25, p. 886.

STATUTORY NOTES**Compiler's Notes.**

The term "this act", in the first sentence, was added to this section by S.L. 1949, Chapter 102, which is codified as §§ 54-901, 54-902, 54-905, 54-906, 54-911 to 54-916, 54-917 to 54-919, 54-921 to 54-925, 54-930, 54-932, and 54-933. The reference probably should be to "this chapter", being chapter 9, title 54, Idaho Code.

The bracketed "s" in the last sentence was added by the compiler to correct the syntax of the sentence.

Section 34 of S.L. 1949, ch. 102, provides as follows:

"If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences,

clauses or phrases be declared unconstitutional."

Section 35 of S.L. 1949, ch. 102, repealed chapter 9 of title 54 of Idaho Code, and ch. 81 of S.L. 1935, and all laws in conflict therewith, and the provisions of any other laws which appear to be applicable to the regulation or the practice of dentistry, insofar as they apply to dentists or dentistry, it being the intent and purpose that this act contain all provisions of law applicable to those subject matters.

Section 26 of S.L. 1967, ch. 312 read: "**Separability.** — If any part of [or] parts of this act shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of any part or parts thereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid."

Effective Dates.

Section 36 of S.L. 1949, ch. 102, declared an emergency. Approved February 26, 1949.

JUDICIAL DECISIONS**Dental Technicians.**

Where the acts done by the dental technician were manifestly within the rubric of the pertinent statutory prescriptions defining the practice of dentistry, trial court was correct in the issuance of permanent injunction enjoining the dental technician from doing those acts. *Board of Dentistry v. Barnes*, 94 Idaho 486, 491 P.2d 1258 (1971).

Where none of the plaintiff-dental technicians were involved in or threatened by a contempt proceeding for breaching a civil injunction secured by the board, the supreme court would not consider abstract question

raised by dental technicians that the board's practice in sending investigators to entrap dental technicians into violating injunction enjoining the technicians from practice of dentistry was an attempt by the board to circumvent criminal procedure and, thus, was an abuse of the board's authority. *Idaho Ass'n of Pub. Dental Technicians, Inc. v. Idaho Bd. of Dental Exmrs.*, 97 Idaho 631, 550 P.2d 134 (1976).

Cited in: *State ex rel. Wolfley v. Oster*, 75 Idaho 472, 274 P.2d 829 (1954).

54-934. Peer review committees — Immunity from liability — Confidentiality of records. — (1) The state board of dentistry or the Idaho state dental association or both may establish one (1) or more peer review committees pursuant to this section, for the purpose of:

- (a) Determining the relevancy of a dentist's usual and reasonable fees or treatment procedure to the terms of a contract;
- (b) Assessing the quality of services rendered; or
- (c) Evaluating claims against dentists or engaging in underwriting decisions in connection with professional liability insurance coverage for dentists.

(2) The board or the associations, any one (1) of which has established a

peer review committee pursuant to law, any committee member or any staff member of either the board or of the associations assisting a peer review committee, and any witness or consultant appearing before or presenting information to a peer review committee shall be immune from liability in any civil action brought as a result of a peer review investigation or proceeding conducted by a peer review committee, if the board, association, committee or staff member, witness or consultant, acts in good faith within the scope of the function of the committee, has made a reasonable effort to obtain the facts of the matter as to which the board or association or he acts, in the reasonable belief that the action taken is warranted by the facts.

(3) Any entity, organization or person acting without malice in making any report or other information available to a peer review committee, or who assists in the origination, investigation or preparation of that information, or assists a committee in carrying out any of its duties or functions, shall be immune from civil liability for any such actions.

(4) Any communications or information relating to peer committee investigations or proceedings as provided by law, and the proceedings and records of the committee related to them, shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless exempt from disclosure in that chapter and title, and shall not be subject to discovery or introduced into evidence in any civil action against a dentist arising out of matters which are the subject of evaluation and review by the committee.

History.

I.C., § 54-934, as added by 1986, ch. 331, § 1, p. 815; am. 1987, ch. 30, § 10, p. 39; am.

1990, ch. 213, § 75, p. 480; am. 1994, ch. 58, § 27, p. 98; am. 1999, ch. 30, § 15, p. 41.

STATUTORY NOTES

Cross References.

State board of dentistry, § 54-907.

Compiler's Notes.

For more on the Idaho state dental association, see <http://www.theisda.org>.

amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as

54-935. Volunteer's license — Qualifications — Permissible practice — Immunity from liability. — (1) Upon application and qualification, the board may issue, without examination, a volunteer's license to a dentist or dental hygienist who is retired from the active practice of dentistry or dental hygiene to enable the retired dentist or dental hygienist to provide dental or dental hygiene services at specified locations to persons who, due to age, infirmity, indigence or disability, are unable to receive regular dental treatment.

(2) For purposes of this section, a dentist or dental hygienist previously holding a dental or dental hygiene license with active status in Idaho or another state shall be considered to be retired if, prior to the date of application for a volunteer's license, he has surrendered or allowed his license with active status to expire with the intention of ceasing to actively

practice as a dentist or dental hygienist for remuneration, he has converted his license with active status to a license with inactive status with the intention of ceasing to actively practice as a dentist or dental hygienist for remuneration, or he has converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice of dentistry or dental hygiene. A dentist or dental hygienist whose dental or dental hygiene license had been restricted, suspended, revoked, surrendered, resigned, converted, or allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action being taken shall not be eligible for a volunteer's license.

(3) An application for a volunteer's license shall include, but not be limited to, the following:

(a) Verification of graduation from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association as of the date of the applicant's graduation;

(b) Verification from each state board in which the applicant was licensed that the applicant maintained his dental or dental hygiene license in good standing without disciplinary action that restricted the applicant's license or resulted in the applicant's license being placed on probation, suspended, revoked or being surrendered, resigned or otherwise allowed to lapse or expire in lieu of disciplinary action;

(c) Verification that the applicant held a dental or dental hygiene license in good standing in Idaho or another state as of the date upon which the dentist or dental hygienist became retired;

(d) Verification that the applicant held an active status dental or dental hygiene license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer's license, provided, that the board may waive the five (5) year requirement in the event that the applicant demonstrates he possesses the knowledge and skills requisite to the practice of dentistry or dental hygiene by successfully completing such examinations as are required by the board; and

(e) A notarized statement from the applicant on a form prescribed by the board, that the applicant will not provide any dental or dental hygiene services to any person or at any location other than as permitted by this section and that the applicant will not accept any amount or form of remuneration, other than as reimbursement for the amount of actual expenses incurred as a volunteer dentist or dental hygienist, for any dental or dental hygiene services provided under the authority of a volunteer's license.

(4) For purposes of this section, the specified locations at which a dentist or dental hygienist holding a volunteer's license may provide dental or dental hygiene services shall be limited to the premises or sites of extended access oral health care programs. The dental services provided at an extended access oral health care program by a dentist holding a volunteer's license shall not require or include the administration of general anesthesia or conscious sedation to a patient unless otherwise specifically approved in advance by the board.

(5) A volunteer's license shall be valid for that period specified for dentists and dental hygienists in section 54-920, Idaho Code, and may be renewed

upon application of the licensee unless the license has been revoked in accordance with this section. The board shall maintain a register of all dentists and dental hygienists who hold a volunteer's license. The board shall not charge an application or licensing fee for issuing or renewing a volunteer's license. A volunteer's license cannot be converted to a license with active, inactive, provisional or special status.

(6) The board may revoke a volunteer's license upon receiving proof satisfactory to the board that the holder of a volunteer's license provided dental or dental hygiene services outside the permissible scope of the volunteer's license or that grounds existed for enforcement or disciplinary action against the holder of a volunteer's license under other sections of this chapter or the administrative rules promulgated under this chapter.

(7) When practicing dentistry or dental hygiene within the permissible scope of a volunteer's license, the holder of a volunteer's license issued pursuant to this section shall be immune from liability for any civil action arising out of the provision of volunteer dental or dental hygiene services. This section does not provide or extend immunity to a holder of a volunteer's license for any acts or omissions constituting negligence.

History.

I.C., § 54-935, as added by 2004, ch. 215,

§ 1, p. 648; am. 2007, ch. 94, § 1, p. 275; am.

2010, ch. 235, § 38, p. 542.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 94, throughout the section, inserted "or dental hygienist" and "or dental hygiene."

The 2010 amendment, by ch. 235, deleted "handicap" following "infirmary" near the end in subsection (1).

Compiler's Notes.

For more on the dental accreditation by the American dental association, see <http://www.ada.org/117.aspx>.

54-936. Continued operation of dental practice — Death of sole proprietor dentist. — In the case of the death of a sole proprietor dentist, the provisions of this chapter shall not be construed as prohibiting the personal representative, executor, surviving spouse or surviving heir of the dentist, upon notification to the state board of dentistry, from continuing to operate the dental practice of the deceased for a period of not more than six (6) months following death. An additional six (6) month period of operation shall be allowed upon approval of the board pursuant to rules as adopted by the board. This exception shall only apply where during such period of time there is a good faith effort being made to sell the dental practice and that all the decisions pertaining to the diagnosis, care and treatment of the patients are made by a dentist licensed and authorized to practice pursuant to the provisions of this chapter. For purposes of this section, "sole proprietor dentist" means a dentist who solely owns a dental practice, regardless of the type of legal entity under which it is operated.

History.

I.C., § 54-936, as added by 2008, ch. 170, § 1, p. 470.

STATUTORY NOTES

Cross References.

State board of dentistry, § 54-907.

CHAPTER 10

ELECTRICAL CONTRACTORS AND JOURNEYMEN

SECTION.

- 54-1001. Declaration of policy.
- 54-1001A. National Electrical Code on file — Evidence. [Repealed.]
- 54-1001B. Inspection provisions inapplicable when installation covered by municipal ordinance.
- 54-1001C. Inspections within municipalities — When authorized.
- 54-1001D. Inspections of modular buildings — When authorized — Approval and certification.
- 54-1002. License essential to engage in business — Licensure authority exclusive to the state.
- 54-1003. Administrator authority.
- 54-1003A. Definitions.
- 54-1004. Inspection of electrical installations — Notice of defects — Disconnecting electrical service.
- 54-1005. Rules — Inspections — Inspection tags and fees.
- 54-1006. Idaho electrical board.

SECTION.

- 54-1007. Issuance of licenses — Reciprocity.
- 54-1008. Duration of license.
- 54-1009. Revocation or suspension of licenses — Hearings — Taking testimony.
- 54-1010. Installations by electrical contractor performed by licensed journeyman — Prior certificate holders entitled to license — List of electricians in contractor's employ.
- 54-1011, 54-1012. [Repealed.]
- 54-1013. Renewal of licenses or registrations — Inactive licenses.
- 54-1013A. [Repealed.]
- 54-1014. Fees.
- 54-1015. Electrical board fund established.
- 54-1016. Exemptions.
- 54-1017. Violations of act a misdemeanor.
- 54-1018. Separability.
- 54-1019. Qualifications of inspectors.
- 54-1020. [Null and Void.]

54-1001. Declaration of policy. — From and after the taking effect of this act, all installations in the state of Idaho of wires and equipment to convey electric current and installations of apparatus to be operated by such current, except as hereinafter provided, shall be made substantially in accord with the National Electrical Code of 1971, as approved by the American Standards Institute, relating to such work as far as the same cover both fire and personal injury hazards, and as the National Electrical Code shall be amended, revised, compiled and published from time to time and as such amendments or revisions are adopted by the Idaho electrical board.

History.

1947, ch. 251, § 1, p. 681; am. 1955, ch. 28,

§ 1, p. 46; am. 1961, ch. 311, § 2, p. 583; am. 1974, ch. 39, § 76, p. 1023.

STATUTORY NOTES

Cross References.

Idaho electrical board, § 54-1006.

Compiler's Notes.

The words "this act" refer to S.L. 1947, ch. 251, which is codified as §§ 54-1001, 54-1002, 54-1003, 54-1005, 54-1007 to 54-1009, 54-1013, and 54-1014 to 54-1018.

The national electrical code of 1971 was adopted by the national fire protection association in May, 1971 and approved by the American standards institute on June 25, 1971. The current edition is dated 2011. See <http://code.necplus.org>.

For more on the American standards institute, see <http://www.ansi.org>.

JUDICIAL DECISIONS

Regulatory Power.

Commissioner of law enforcement (now director of state police) does not have the authority to issue regulations governing inspection of installations by electrical contractors and journeymen, since act regulating electri-

cal contractors and journeymen does not provide for the issuance of rules and regulations by commissioner of law enforcement. *Grayot v. Summers*, 75 Idaho 125, 269 P.2d 765 (1954).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 1, 33 to 35.

54-1001A. National Electrical Code on file — Evidence. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 54-1001A, as added by 1961, ch. 311, § 3, p. 583;

am. 1974, ch. 39, § 77, p. 1023, was repealed by S.L. 1996, ch. 421, § 38, effective July 1, 1996.

54-1001B. Inspection provisions inapplicable when installation covered by municipal ordinance. — The provisions of this act relating to state inspection, except as provided in section 54-1001C, [Idaho Code,] shall not apply within the corporate limits of incorporated cities and villages which, by ordinance or building code, prescribe the manner in which wires or equipment to convey current and apparatus to be operated by such current shall be installed, provided that the provisions of the National Electrical Code are used as the minimum standard in the preparation of such ordinances or building codes and provided that actual inspections are made.

History.

I.C., § 54-1001B, as added by 1961, ch. 311, § 3, p. 583.

STATUTORY NOTES

Compiler's Notes.

The words "this act", in the first sentence, were added by S.L. 1961, Chapter 311, which is codified as §§ 54-1001, 54-1001B, 54-1001C, 54-1002 to 54-1010, 54-1013, and 54-1014 to 54-1017.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

The national electrical code of 1971 was adopted by the national fire protection association in May, 1971 and approved by the American standards institute on June 25, 1971. The current edition is dated 2011. See <http://code.necplus.org>.

For more on the American standards institute, see <http://www.ansi.org>.

OPINIONS OF ATTORNEY GENERAL

This section and § 54-2620 should not be construed so as to delegate the state's sovereign authority over its buildings to municipalities when no such legislative intent has been expressed. The doctrine of preemption does

apply in this instance; therefore, a city has no authority over the electrical and plumbing work being performed upon state buildings within the city limits. OAG 90-6.

The provisions of this section and § 54-

2620 do not empower the city to require the state or its contractors to obtain electrical and plumbing permits; therefore, a city does not have the authority to require the state to

obtain building permits when building or remodeling state buildings within the city. OAG 90-6.

54-1001C. Inspections within municipalities — When authorized. — The administrator of the division of building safety may make electrical inspections within any city upon written request from the mayor or manager of such city. Such inspections shall be made in accordance with the local ordinance or building code. Service of the inspector shall be furnished at cost, such cost to be paid monthly to the administrator by the city requesting inspection service.

History.

I.C., § 54-1001C, as added by 1961, ch. 311,

§ 3, p. 583; am. 1974, ch. 39, § 78, p. 1023; am. 1996, ch. 421, § 39, p. 1406.

STATUTORY NOTES

Cross References.

Administrator of division of building safety,
§ 67-2601A.

54-1001D. Inspections of modular buildings — When authorized — Approval and certification. — (1) Notwithstanding the exemption provided in subsection (1)(c) of section 54-1016, Idaho Code, the administrator of the division of building safety may make electrical inspections of any modular building upon written request from the manufacturer.

(a) Inspections shall be made in accordance with the codes adopted in this chapter.

(b) Inspection fees shall be as provided in section 39-4303, Idaho Code.

(c) The administrator may issue inspection tags for inspections if the buildings are in compliance with the codes adopted in this chapter.

(2) The administrator of the division of building safety is hereby authorized to make inspections of electrical installations as set forth herein and to issue inspection tags covering such installations.

History.

I.C., § 54-1001D, as added by 2004, ch. 250,
§ 4, p. 715; am. 2007, ch. 252, § 7, p. 737.

STATUTORY NOTES

Cross References.

Administrator of division of building safety,
§ 67-2601A.

Code" for "promulgated in board rule and shall be paid prior to the inspection" in subsection (1)(b).

Amendments.

The 2007 amendment, by ch. 252, substituted "provided in section 39-4303, Idaho

Effective Dates.

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

54-1002. License essential to engage in business — Licensure authority exclusive to the state. — (1) It shall be unlawful for any person, partnership, company, firm, association or corporation, to act, or attempt to act, as an electrical contractor or special electrical contractor in

this state until such person, partnership, company, firm, association or corporation, shall have received a license as an electrical contractor, as herein defined, issued pursuant to the provisions of this chapter by the administrator of the division of building safety.

(2) It shall be unlawful for any person to act as a journeyman electrician in this state until such person shall have received a license as a journeyman electrician, as herein defined, issued pursuant to the provisions of this act, by the administrator of the division of building safety, provided, however, that any person who has been issued a master electrician’s license pursuant to this chapter may act as a journeyman electrician.

(3) It shall be unlawful for any person to act as a specialty electrician in this state until such person shall have received a license as a specialty electrician, as herein defined, issued pursuant to the provisions of this act, by the administrator of the division of building safety, provided however, that any person who has been issued a master electrician’s license or a journeyman electrician’s license pursuant to this act may act as a specialty electrician.

(4) Licensure of electrical contractors, journeyman electricians, master electricians, specialty electricians, specialty electrical contractors and registration of apprentice electricians shall be within the exclusive jurisdiction of the state pursuant to this chapter and no local jurisdiction shall have the authority to require additional licensure or to require payment of any fees in order for any licensee to engage in the electrical construction trade within the local jurisdiction or to issue licenses to persons licensed under this chapter which are inconsistent with the provisions of this chapter or rules promulgated by the division of building safety. The state shall investigate all local infractions and state violations of this chapter and prosecute the same. The local jurisdictions will assist the state by requesting investigations within their jurisdictions. Nothing in this chapter shall restrict a city or county from imposing stricter public safety rules, notwithstanding any provision of Idaho Code.

History.

1947, ch. 251, § 2, p. 681; am. 1961, ch. 311, § 4, p. 583; am. 1974, ch. 39, § 79, p. 1023; am. 1986, ch. 296, § 1, p. 742; am. 1996, ch.

421, § 40, p. 1406; am. 1997, ch. 397, § 1, p. 1258; am. 1999, ch. 99, § 1, p. 311; am. 1999, ch. 367, § 1, p. 968; am. 2000, ch. 39, § 1, p. 77; am. 2002, ch. 139, § 1, p. 391.

STATUTORY NOTES

Cross References.

Administrator of division of building safety, § 67-2601A.

Amendments.

This section was amended by two 1999 acts — ch. 99, § 1 and ch. 367, § 1, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 99, § 1, deleted “journeyman” preceding “electrician’s license” in subsection (2).

The 1999 amendment, by ch. 367, § 1, in subsection (1), inserted “or special electrical

contractor” following “as an electrical contractor”; added a new subsection (3) and redesignated former subsection (3) as current subsection (4); in current subsection (4), inserted “, master journeyman electricians, specialty electricians, specialty electrical contractors and registration of apprentice electricians” preceding “shall be within the exclusive jurisdiction of the state”.

Compiler’s Notes.

The words “this act”, in subsection (2), were added by S.L. 1961, Chapter 311, which is codified as §§ 54-1001, 54-1001B, 54-1001C,

54-1002 to 54-1010, 54-1013, and 54-1014 to 54-1017.

The words "this act", as used in subsection (3), refer to S.L. 1999, ch. 367 compiled as §§ 54-1002 to 54-1003A, 54-1005 to 54-1007, 54-1010, 54-1014, and 54-1017.

All three references to "this act" probably should be to "this chapter".

Effective Dates.

Section 4 of S.L. 2000, ch. 39 provided that the act shall be in full force and effect on and after July 1, 2000.

OPINIONS OF ATTORNEY GENERAL

An individual or firm submitting a bid to a property owner, general contractor, or contracting agency to do electrical work must possess an electrical contractor's license at the time of submission of such a bid, as this conduct would constitute an "attempt" to act

as contractor; on the other hand, a general and relatively widely broadcast advertising is at most a mere "preparation" as opposed to an "attempt" and is not covered by this section. OAG 83-9.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 33 to 35.

54-1003. Administrator authority. — (1) Only the administrator of the division of building safety of the state of Idaho is authorized and empowered to conduct examinations and to pass upon the qualifications of applicants, and to grant and issue licenses or registrations to such applicants as are found to be qualified to engage in the trade, business or calling of a journeyman electrician, electrical contractor, master electrician, specialty electrician, specialty electrical contractor, specialty electrical trainee or apprentice electrician in the manner and upon the terms and conditions hereinafter provided.

(2) No licenses granted hereunder shall be transferable. Licenses shall be issued upon the condition that the holder thereof shall comply with all provisions of this chapter.

(3) The administrator of the division of building safety is authorized to impose civil penalties as provided in this chapter.

History.

1947, ch. 251, § 3, p. 681; am. 1961, ch. 311, § 5, p. 583; am. 1974, ch. 39, § 80, p. 1023; am. 1986, ch. 296, § 2, p. 742; am. 1996, ch.

421, § 41, p. 1406; am. 1997, ch. 397, § 2, p. 1258; am. 1999, ch. 99, § 2, p. 311; am. 1999, ch. 367, § 2, p. 968; am. 2000, ch. 242, § 1, p. 676.

STATUTORY NOTES

Cross References.

Administrator of division of building safety, § 67-2601A.

Amendments.

This section was amended by two 1999 acts — ch. 99, § 2 and ch. 367, § 2, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by S.L. 1999, ch. 99,

§ 2, deleted "journeyman" preceding "electrician in the manner and upon the terms".

The 1999 amendment, by S.L. 1999, ch. 367, § 2, inserted "or registrations" following "to grant and issue licenses", substituted "electrician, electrical contractor, master journeyman electrician" for "electrician or electrical contractor or master journeyman electrician", inserted "specialty electrician, specialty electrical contractor, specialty electrical

trainee or apprentice electrician" preceding "in the manner and upon the terms and conditions".

54-1003A. Definitions. — (1) **Electrical Contractor.** Except as provided in section 54-1016, Idaho Code, any person, partnership, company, firm, association or corporation engaging in, conducting, or carrying on the business of installing wires or equipment to carry electric current or installing apparatus to be operated by such current, or entering into agreements to install such wires, equipment or apparatus, shall for the purpose of this act be known as an electrical contractor. An electrical contractor, prior to being issued a license, shall be required to provide proof of liability insurance in the amount of three hundred thousand dollars (\$300,000) and proof of worker's compensation insurance if applicable.

(2) **Journeyman Electrician.** Except as provided in section 54-1016, Idaho Code, and subsections (3), (4), (5) and (6) of this section, any person who personally performs or supervises the actual physical work of installing electric wiring or equipment to convey electric current, or apparatus to be operated by such current, shall, for the purpose of this act, be known as a journeyman electrician.

(3) **Apprentice Electrician.** Any person who, for the purpose of learning the trade of journeyman electrician, engages in the installation of electric wiring, equipment, or apparatus while under the constant on-the-job supervision of a qualified journeyman electrician shall, for the purpose of this act, be known as an apprentice electrician.

(4) **Maintenance Electrician.** Any person who is regularly employed to service, maintain or repair electrical apparatus, or to make minor repairs or alterations to existing electrical wires or equipment located on his employer's premises shall, for the purpose of this act, be known as a maintenance electrician.

(5) **Master Electrician.** A person who has the necessary qualifications, training, experience and technical knowledge to plan, layout or design the installation of electrical wiring or equipment, or to supervise such planning, layout, or design, and who performs or supervises such planning, layout or design, shall, for the purpose of this act, be known as a master electrician.

(6) **Specialty Electrician.** A person having the necessary qualifications, training, experience and technical knowledge to install, alter, repair and supervise the installing, altering or repairing of special classes of electrical wiring, apparatus or equipment within categories adopted by the board. Specialty electricians shall perform work only within the scope of the specialty category for which the person is licensed.

(7) **Specialty Electrical Contractor.** Except as provided in section 54-1016, Idaho Code, any person, partnership, company, firm, association or corporation engaging in, conducting or carrying on the business of installing, altering or repairing special classes of electrical wiring, apparatus or equipment within categories adopted by the board or entering into agreements to perform such specialty work, shall for the purpose of this act be known as a specialty electrical contractor. Specialty electrical contractors shall perform work only within the scope of the specialty category for which

the contractor is licensed. A specialty electrical contractor, prior to being issued a license, shall be required to provide proof of liability insurance in the amount of three hundred thousand dollars (\$300,000) and proof of worker's compensation insurance if applicable.

(8) Specialty Electrical Trainee. Any person who, for the purpose of learning the trade of a specialty electrician, engages in the installation of electrical wiring, equipment or apparatus while under the constant on-the-job supervision of a qualified specialty electrician shall, for the purpose of this act, be known as a specialty electrical trainee.

History.

I.C., § 54-1003A, as added by 1961, ch. 311, § 6, p. 583; am. 1986, ch. 296, § 3, p. 742; am.

1999, ch. 99, § 3, p. 311; am. 1999, ch. 367, § 3, p. 968; am. 2005, ch. 82, § 1, p. 294.

STATUTORY NOTES

Amendments.

This section was amended by two 1999 acts — ch. 99, § 3 and ch. 367, § 3, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by S.L. 1999, ch. 99, § 3, in subsection (2), substituted “subsections (3), (4) and (5) of this section” for “part (3) and part (4) of this section” and in subsection (5), deleted “journeyman” in two places.

The 1999 amendment, by S.L. 1999, ch. 367, § 3, in subsection (2), substituted “subsections (3), (4), (5) and (6) of this section” for “part (3) and part (4) of this section” and added present subsections (6), (7) and (8).

(1) to (4), were added by S.L. 1961, Chapter 311, which is codified as §§ 54-1001, 54-1001B, 54-1001C, 54-1002 to 54-1010, 54-1013, and 54-1014 to 54-1017.

The words “this act”, as used in in subsection (5), refer to S.L. 1986, chapter 296, which is codified as §§ 54-1002 to 54-1003A, 54-1005, and 54-1007.

The words “this act”, as used in subsections (7) and (8), refer to S.L. 1999, ch. 367 compiled as §§ 54-1002 to 54-1003A, 54-1005 to 54-1007, 54-1010, 54-1014, and 54-1017.

All of the references to “this act” probably should be to “this chapter”.

Compiler's Notes.

The words “this act”, as used in subsections

OPINIONS OF ATTORNEY GENERAL

An individual or firm submitting a bid to a property owner, general contractor, or contracting agency, to do electrical work must possess an electrical contractor's license at the time of submission of such a bid, as this

conduct would constitute an “attempt” to act as contractor; on the other hand, a general and relatively widely broadcast advertising is at most a mere “preparation” as opposed to an “attempt.” OAG 83-9.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 33.

54-1004. Inspection of electrical installations — Notice of defects — Disconnecting electrical service. — The administrator of the division of building safety may, during reasonable hours, inspect, reinspect or test any electrical installation coming under the provisions of this act. If, upon inspection, any electrical installation is found to be not in conformity with the provisions of this act, the person, partnership, company, firm, association or corporation making such installation shall immediately be notified, in writing. The notice shall clearly indicate any and all defects to be

corrected and specify a definite period of time during which such corrections shall be made. The administrator may cut or disconnect any wire in cases of emergency where necessary for safety of life or property, or order the disconnection of electrical service to any electrical installation, coming under the provisions of this act, when such installation is found to be dangerous to life or property.

History.

I.C., § 54-1004, as added by 1961, ch. 311,

§ 7, p. 583; am. 1974, ch. 39, § 81, p. 1023;
am. 1996, ch. 421, § 42, p. 1406.

STATUTORY NOTES**Cross References.**

Administrator of division of building safety,
§ 67-2601A.

Prior Laws.

Former § 54-1004 (1947, ch. 251, § 4, p. 681) was repealed by § 1 of S.L. 1961, ch. 311.

Compiler's Notes.

The words "this act", in three places, were added by S.L. 1961, Chapter 311, which is codified as §§ 54-1001, 54-1001B, 54-1001C, 54-1002 to 54-1010, 54-1013, and 54-1014 to 54-1017.

JUDICIAL DECISIONS

Cited in: *Messenger v. Burns*, 86 Idaho 26, 382 P.2d 913 (1963).

54-1005. Rules — Inspections — Inspection tags and fees. —

(1) The administrator of the division of building safety is hereby authorized and directed to enforce rules consistent with this act for the administration of this act and to effectuate the purposes thereof, and for the examination and licensing of electrical contractors, journeyman electricians, master electricians, specialty electricians, specialty electrical contractors, specialty electrical trainees and apprentice electricians, and to make inspections of electrical installations referred to in section 54-1001, Idaho Code, and to issue inspection tags covering such installations, and to collect the fees established therefor.

(2) The administrator of the division of building safety may make electrical inspections for another state or local jurisdiction upon request by an appropriate building official. Such inspections shall be made in accordance with the applicable electrical codes of the requesting jurisdiction. Fees charged for such inspection services shall be as provided in the rules promulgated by the board.

(3) Individuals, firms, cooperatives, corporations, or municipalities selling electricity, hereinafter known as the power supplier, shall not connect with or energize any electrical installation, coming under the provisions of this act, unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag, issued by the administrator, covering the installation to be energized. Immediately after an installation has been energized, the power supplier shall deliver to the administrator or his authorized agent, the inspection tag covering such installation.

(4) It shall be unlawful for any person, partnership, company, firm, association or corporation other than a power supplier, to energize any electrical installation coming under the provisions of this act unless an

application for an electrical inspection tag, covering such installation, together with the inspection fee herein provided, has been forwarded to the administrator.

History.

1947, ch. 251, § 5, p. 681; am. 1955, ch. 28, § 2, p. 46; am. 1961, ch. 311, § 8, p. 583; am. 1974, ch. 39, § 82, p. 1023; am. 1984, ch. 123,

§ 32, p. 281; am. 1986, ch. 296, § 4, p. 742; am. 1996, ch. 421, § 43, p. 1406; am. 1999, ch. 99, § 4, p. 311; am. 1999, ch. 367, § 4, p. 968; am. 2004, ch. 250, § 5, p. 715.

STATUTORY NOTES

Cross References.

Administrator of division of building safety, § 67-2601A.

Amendments.

This section was amended by two 1999 acts — ch. 99, § 4 and ch. 367, § 4, both effective July 1, 1999 — which have been compiled together.

The 1999 amendment, by ch. 99, § 4, in subsection (1), deleted “journeyman” preceding “electricians” and deleted “and to set by rule the fee for master journeyman electrician licenses,” preceding “and to make inspections of electrical installations”.

The 1999 amendment, by ch. 367, § 4, in subsection (1), substituted “examination and licensing of electrical contractors” for “licensing of electrical contractors”, deleted “and the examination and licensing of” preceding “journeyman electricians,” deleted “and the examination and licensing of” preceding “master journeyman electricians”, inserted “, specialty electricians, specialty electrical contractors, specialty electrical trainees and ap-

prentice electricians,” preceding “and to set by rule”, substituted “fees for all such licenses” for “fee for master journeyman electrician licenses”.

Compiler’s Notes.

The words “this act”, as first used in the first sentence, refer to S.L. 1947, ch. 251, which is codified as §§ 54-1001, 54-1002, 54-1003, 54-1005, 54-1007 to 54-1009, 54-1013, and 54-1014 to 54-1018.

The second occurrence of the words “this act” in subsection (1) was added by S.L. 1955, chapter 28, which is currently codified as § 54-1001 and this section.

The words “this act”, in subsections (3) and (4), were added by S.L. 1961, Chapter 311, which is codified as §§ 54-1001, 54-1001B, 54-1001C, 54-1002 to 54-1010, 54-1013, and 54-1014 to 54-1017.

Each of these references to “this act” probably should be to “this chapter”.

Effective Dates.

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

OPINIONS OF ATTORNEY GENERAL

In light of the promulgation of uniform building and safety codes by the legislature, the authority granted to the department of administration and the department of labor and industrial services, and the directive by

the governor that such codes will apply to state projects, the state’s authority over its projects is complete. There is simply no basis for local infringement by a municipality. OAG 90-6.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 1, 33 to 35.

54-1006. Idaho electrical board. — (1) The Idaho electrical board, hereinafter known as the board, is hereby created and made a part of the division of building safety. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this act, and to serve as secretary to the Idaho electrical board.

(2) The board shall consist of nine (9) members to be appointed by the governor with power of removal for cause. Two (2) members shall be licensed journeymen or master electricians; two (2) members shall be employees or

officers of licensed electrical contractors; one (1) member shall be a licensed specialty journeyman or contractor; one (1) member shall be an employee or officer of an electrical power provider; one (1) member shall be an employee or officer of a manufacturing plant or other large power user; one (1) member shall be an employee or director of a manufacturer or distributor of electrical supplies or materials; and one (1) member shall be from the public at large not directly associated with the electrical industry. Board members shall be appointed for a term of four (4) years. Members of the board shall hold office until expiration of the term to which the member was appointed and until his successor has been duly appointed and qualified. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(3) All members of the board shall be citizens of the United States, residents of this state for not less than two (2) years and shall be qualified by experience, knowledge and integrity in formulating rules for examinations, in passing on the fitness and qualifications of applicants for electrical contractor and journeyman electrician licenses and in establishing standards for electrical products to be used in electrical installations coming under the provisions of this act.

(4) The members of the board shall, at their first regular meeting following the effective date of this act and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board and a vice chairman who shall preside at any board meeting in the event the chairman is not present. A majority of the members of the board shall constitute a quorum.

(5) The board is authorized and directed to prescribe and amend rules consistent with this act for the administration of this chapter and to effectuate the purpose thereof, and for the examination and licensing of electrical contractors, journeyman electricians, master electricians, specialty electricians, specialty electrical contractors, specialty electrical trainees and apprentice electricians. The board shall also establish the classifications for specialty electrician and specialty electrical contractor licensing and the fees to be charged for permits and inspections of electrical systems. The board shall establish by administrative rule the fines to be paid for citations issued and shall hear appeals regarding the imposition of civil penalties for violations of this chapter and the rules of the Idaho electrical board. The board is authorized to affirm, reject, decrease or increase the penalty imposed by the administrator. However, in no case shall the penalty exceed one thousand dollars (\$1,000) for each offense.

(6) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(n), Idaho Code.

History.

I.C., § 54-1006, as added by 1961, ch. 311, § 9, p. 583; am. 1974, ch. 39, § 83, p. 1023; am. 1980, ch. 247, § 57, p. 582; am. 1984, ch. 123, § 33, p. 281; am. 1986, ch. 305, § 1, p. 756; am. 1989, ch. 119, § 1, p. 265; am. 1996, ch. 421, § 44, p. 1406; am. 1999, ch. 169, § 1,

p. 457; am. 1999, ch. 282, § 1, p. 704; am. 1999, ch. 367, § 5, p. 968; am. 2000, ch. 39, § 2, p. 77; am. 2000, ch. 120, § 1, p. 260; am. 2000, ch. 242, § 2, p. 676; am. 2001, ch. 151, § 3, p. 546; am. 2002, ch. 98, § 1, p. 268; am. 2011, ch. 23, § 1, p. 64; am. 2012, ch. 29, § 1, p. 86.

STATUTORY NOTES

Cross References.

Administrator of division of building safety, § 67-2601A.

Prior Laws.

Former § 54-1006 (1947, ch. 251, § 6, p. 681) was repealed by § 1 of S.L. 1961, ch. 311.

Amendments.

This section was amended by three 1999 acts — ch. 169, § 1, ch. 282, § 1 and ch. 367, § 5, all effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 169, § 1, added the last sentence in subsection (5).

The 1999 amendment, by ch. 282, § 1, in subsection (2), substituted “nine (9)” for “seven (7)” and added the present second sentence.

The 1999 amendment, by ch. 367, § 5, in subsection (5), inserted “examination and” preceding “licensing of electrical contractors”, deleted “and the examination and licensing of” preceding “journeyman electricians”, inserted “, master journeyman electricians, specialty electricians, specialty electrical contractors, specialty electrical trainees and apprentice electricians” at the end of the first sentence and inserted “the classifications for specialty electrician and specialty electrical contractor licensing and” following “the board shall also establish”.

This section was amended by three 2000 acts — ch. 39, § 2, ch. 120, § 1, and ch. 242, § 9, all effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 39, § 2, deleted “journeyman” following “master” in the first sentence of subsection (5).

The 2000 amendment, by ch. 120, § 1, inserted “and” preceding “to serve as secretary”; deleted “and to appoint the chief electrical inspector” from the end of subsection

(1); and deleted “journeyman” following “master” in the first sentence of subsection (5).

The 2000 amendment, by ch. 242, § 2, in subsection (5), deleted “journeyman” following “master” in the first sentence; inserted “and shall hear appeals regarding the imposition of civil penalties” and substituted “chapter” for “act” in the third sentence, and added the last two sentences.

The 2011 amendment, by ch. 23, substituted “section 59-509(n), Idaho Code” for “section 59-509(h), Idaho Code” in subsection (6).

The 2012 amendment, by ch. 29, substituted “board and a vice chairman who shall preside at any board meeting in the event the chairman is not present” at the end of the first sentence in subsection (4) for the provisions of the former second sentence, which read: “In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman.”

Compiler’s Notes.

The phrase “the effective date of this act,” in subsection (4), refers to the effective date of S.L. 1961, ch. 311, which was May 1, 1961, sixty days after adjournment on March 2, 1961.

The words “this act,” in subsections (1) and (3), were added by S.L. 1961, Chapter 311, which is codified as §§ 54-1001, 54-1001B, 54-1001C, 54-1002 to 54-1010, 54-1013, and 54-1014 to 54-1017.

The words “this act,” in subsection (5), refer to S.L. 1989, chapter 119, which is currently codified as this section.

Each of these references to “this act” probably should be to “this chapter”.

Effective Dates.

Section 3 of S.L. 1989, ch. 119 declared an emergency. Approved March 23, 1989.

Section 2 of S.L. 2002, ch. 98 declared an emergency. Approved March 19, 2002.

54-1007. Issuance of licenses — Reciprocity. — (1) The administrator shall issue licenses to such persons as have by examination shown themselves to be fit, competent and qualified to engage in the trade of journeyman electrician, specialty electrician or master electrician as defined in section 54-1003A, Idaho Code, and to such persons, firms, partnerships, associations or corporations as have shown themselves to be fit, competent and qualified to engage in the business of electrical contracting or specialty electrical contracting as defined in section 54-1003A, Idaho Code.

(2) An apprentice electrician, as defined in section 54-1003A, Idaho Code, may take the journeyman’s examination if he has completed the required related instruction for electrical apprentices as approved by the Idaho state board for professional-technical education, completion of which shall be evidenced by a certificate from an approved provider, and has worked the

number of hours as prescribed by the Idaho electrical board, provided that for all the time he is claiming to have worked as an apprentice electrician, the apprentice shall have been registered with the division of building safety as an apprentice. The electrical board may, by rule, fix the apprentice registration fee, in an amount not to exceed the costs of issuing apprentice registration certificates and enforcing the apprentice registration provisions of this chapter, and may also by rule establish requirements relative to the manner of registration renewal, verification of employment, the number of instructional hours completed, continuation training and the number of hours worked.

(a) All verification of employment forms submitted by an apprentice shall be entered into and maintained in the apprentice's file by the division of building safety. The division of building safety shall provide the apprentice online access to this information.

(b) An apprentice who has completed the number of instructional hours and has not taken or passed the journeyman's examination within two (2) years of completion of the instructional training hours, shall provide proof of continuation training as set by rule of the electrical board.

(c) An apprentice who has not advanced in apprenticeship training for a period of two (2) years shall complete continuation training as set by rule of the electrical board.

(3) Any person who has worked as a licensed journeyman for a period of not less than four (4) years and who has worked the number of hours as prescribed by rule of the board as a licensed journeyman electrician shall be considered as qualified to apply for a master electrician's license in this state. The Idaho electrical board, in establishing by rule the requirements for a master electrician's license, shall also take into account the applicant's performance as a journeyman electrician.

(4) Any person with out-of-state experience who has worked as a journeyman electrician or as an apprentice electrician for a period of four (4) years, and who has met such other requirements as established by rule of the board, shall be considered as qualified to apply for a journeyman electrician's license in this state.

(5) To the extent that other states which provide for the licensing of electricians provide for similar action, the administrator, on the recommendation of the Idaho electrical board, may grant licenses to electricians licensed by such other states, upon payment by the applicant of the required fee and upon furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this subsection are not required to take a written examination.

History.

1947, ch. 251, § 7, p. 681; am. 1961, ch. 311, § 10, p. 583; am. 1972, ch. 142, § 1, p. 309; am. 1974, ch. 39, § 84, p. 1023; am. 1986, ch. 296, § 5, p. 742; am. 1986, ch. 309, § 1, p. 760; am. 1996, ch. 421, § 45, p. 1406; am.

1999, ch. 99, § 5, p. 311; am. 1999, ch. 329, § 25, p. 852; am. 1999, ch. 367, § 6, p. 968; am. 2002, ch. 123, § 1, p. 346; am. 2003, ch. 135, § 1, p. 392; am. 2004, ch. 245, § 1, p. 711; am. 2009, ch. 112, § 1, p. 364; am. 2011, ch. 16, § 1, p. 52.

STATUTORY NOTES

Cross References.

Administrator of division of building safety, § 67-2601A.

State board for professional-technical education, § 33-2202.

Amendments.

This section was amended by two 1986 acts — ch. 296, § 5 and ch. 309, § 1 — which appear to be compatible and have been compiled together.

The 1986 amendment, by ch. 296, in subsection (1) in the first sentence added “or master journeyman electrician,” and added the last sentence.

The 1986 amendment, by ch. 309, in subsection (1) in the second sentence added the proviso and the third and fourth sentences.

This section was amended by three 1999 acts — ch. 99, § 5, ch. 329, § 25 and ch. 367, § 6, all effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 99, § 5, in subsection (1), deleted “journeyman” preceding “electrician, and to such persons” in the first sentence and deleted “journeyman” preceding “electrician’s license” in the last sentence of the subsection.

The 1999 amendment, by ch. 329, § 25, substituted “professional-technical educa-

tion” for “vocational education” in subsection (1).

The 1999 amendment, by ch. 367, § 6, in subsection (1), inserted “specialty electrician” following “trade of journeyman electrician” and inserted “or specialty electrical contracting” at the end of the first sentence.

The 2009 amendment, by ch. 112, in the first sentence of subsection (2), inserted “completion of which shall be evidenced by a certificate from an approved provider,” substituted “all the time” for “each such year” and deleted “paid an apprentice registration fee, and submitted with his annual application for apprentice registration verification of employment, the number of instructional hours completed and the number of hours worked”; in the second sentence of subsection (2) substituted “this chapter” for “this act”; added subsection (2)(a) and redesignated former subsections (2)(a) and (2)(b) as subsections (2)(b) and (2)(c).

The 2011 amendment, by ch. 16, inserted “registration renewal” in the last sentence in the introductory paragraph in subsection (2).

Effective Dates.

Section 2 of S.L. 1972, ch. 142 provided the act should take effect on and after July 1, 1972.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 34.

54-1008. Duration of license. — (1) All licenses, including license renewals, for master electricians, journeyman electricians and specialty journeyman electricians shall issue for a period of three (3) years, and shall expire three (3) years from the date of issue unless renewed, revoked or suspended.

(2) Electrical contractor and specialty electrical contractor licenses issued after July 1, 2002, shall issue for a period of one (1) year and shall expire one (1) year from the date of issue unless renewed, revoked or suspended.

(3) Electrical apprentice registrations issued or renewed after July 1, 2009, shall be issued for a period of five (5) years.

(4) Electrical specialty trainee registrations issued or renewed after July 1, 2009, shall be issued for a period of three (3) years.

(5) Each licensing period and each registration period shall end at midnight on the last day of the month of the licensing or registration period. Licenses and registrations not renewed by this date shall have expired.

(6) The board shall promulgate rules to provide for a staggered system of issuing and renewing licenses.

History.

1947, ch. 251, § 8, p. 681; am. 1961, ch. 311, § 11, p. 583; am. 2002, ch. 53, § 1, p. 119; am.

2006, ch. 82, § 1, p. 244; am. 2009, ch. 112, § 2, p. 364.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 82, rewrote the section, which formerly read: "All licenses, including license renewals other than as provided in section 54-1013A, Idaho Code, for master electricians, journeyman electricians and specialty journeyman electricians shall bear the date of issue, and shall expire thirty-six (36) calendar months from the date of issue, unless renewed as provided in section 54-1013, Idaho Code. Electrical contractor, specialty electrical contractor and apprentice/specialty trainee licenses issued after

July 1, 2002, shall bear the date of issue and shall expire on the first day of July next following the date of issue, unless renewed as provided in section 54-1013, Idaho Code. Each licensing period shall end at midnight on the last day of the licensing period."

The 2009 amendment, by ch. 112, deleted "and apprentice/specialty trainee" following "electrical contractor" in subsection (2); added subsections (3) and (4); redesignated and rewrote former subsection (3) as subsection (5); and redesignated former subsection (4) as subsection (6).

54-1009. Revocation or suspension of licenses — Hearings — Taking testimony. — (1) The administrator shall have power to revoke or suspend any license if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has willfully violated any of the rules prescribed by the board, or as prescribed in this chapter; or has, after due notice, failed or refused to correct, within the specified time, any electrical installation not in compliance with the provisions of this chapter, or has failed to pay within the time provided, civil penalties which have become final by operation of law.

(2) The administrator shall have the power to revoke or suspend any electrical contractor or electrical specialty contractor license if, at any time during the term of active contractor or specialty contractor licensure, the licensee failed to maintain required liability insurance or applicable worker's compensation insurance.

(3) Before any license shall be revoked or suspended, the holder thereof shall have written notice enumerating the charges against him, and shall be given a hearing by said administrator, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall not be less than five (5) days after the service thereof.

(a) The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(b) Any party aggrieved by the action of the administrator shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

(4) The administrator shall have the power to appoint, by an order in writing, a hearing officer to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the administrator shall be based on his examination of the testimony taken and the records produced. Any person whose license has been revoked may, after the expiration of one (1) year from the date of such revocation, but not before, apply for a new license.

History.

1947, ch. 251, § 9, p. 681; am. 1961, ch. 311, § 12, p. 583; am. 1974, ch. 39, § 85, p. 1023; am. 1984, ch. 123, § 34, p. 281; am. 1993, ch.

216, § 60, p. 587; am. 1999, ch. 68, § 1, p. 179; am. 2000, ch. 242, § 3, p. 676; am. 2006, ch. 83, § 1, p. 245.

STATUTORY NOTES**Cross References.**

Administrator of division of building safety, § 67-2601A.

the former undesignated paragraphs with the present subsection designations; substituted "this chapter" for "this act" in present subsection (1); and added present subsection (2).

Amendments.

The 2006 amendment, by ch. 83, designated

JUDICIAL DECISIONS

Cited in: Grayot v. Summers, 75 Idaho 125, 269 P.2d 765 (1954).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 35.

54-1010. Installations by electrical contractor performed by licensed journeyman — Prior certificate holders entitled to license — List of electricians in contractor's employ. — (1) On and after July 1, 1961, any electrical contractor who works as a journeyman electrician, as herein defined, shall be required to have a journeyman electrician's license issued under the provisions of this act. All installations of electrical wiring, equipment or apparatus made by an electrical contractor shall be done by or under the direct supervision of a licensed journeyman electrician.

(2) The individual owner of an electrical contracting business may act as his own journeyman electrician provided that he has complied with the provisions of section 54-1002, Idaho Code, pertaining to journeyman electrician. Each electrical contractor in this state shall, upon request of the administrator, or his authorized agent, furnish a list of journeyman electricians in said electrical contractor's employ.

(3) From and after July 1, 1986, any individual working as an apprentice electrician, as defined in this act, must be registered with the division of building safety, as an apprentice electrician, as provided in section 54-1007, Idaho Code; and it shall be unlawful for an individual to work as an apprentice electrician without possessing a current apprentice registration certificate.

(4) On and after July 1, 1999, any individual working as a specialty electrical trainee, as defined in this chapter, must be registered with the division of building safety, as a specialty electrical trainee. It shall be unlawful for an individual to work as a specialty electrical trainee without possessing a current registration certificate.

History.

I.C., § 54-1010, as added by 1961, ch. 311, § 13, p. 583; am. 1974, ch. 39, § 86, p. 1023;

am. 1986, ch. 309, § 2, p. 760; am. 1996, ch. 421, § 46, p. 1406; am. 1999, ch. 367, § 7, p. 968.

STATUTORY NOTES

Cross References.

Administrator of division of building safety, § 67-2601A.

added by S.L. 1961, Chapter 311, which is codified as §§ 54-1001, 54-1001B, 54-1001C, 54-1002 to 54-1010, 54-1013, and 54-1014 to 54-1017.

Prior Laws.

Former § 54-1010 (1947, ch. 251, § 10, p. 681) was repealed by § 1 of S.L. 1961, ch. 311.

The words "this act", in subsection (3), were added by S.L. 1986, chapter 309, which is currently compiled as § 54-1002 and this section.

Compiler's Notes.

The words "this act", in subsection (1), were

Each of these references to "this act" probably should be to "this chapter".

54-1011, 54-1012. Temporary permits — Rights granted by certificate. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1947,

ch. 251, §§ 11, 12, p. 681, were repealed by S.L. 1961, ch. 311, § 1.

54-1013. Renewal of licenses or registrations — Inactive licenses.

— (1) A license or registration once issued under this chapter, unless revoked or suspended as herein provided, may be renewed at any time during the final month of the licensing period on the payment of the renewal fee herein specified, proof of satisfaction of applicable continuing education requirements as established by the electrical board, proof of satisfaction of applicable apprentice and specialty trainee instruction and work requirements as established by the electrical board, and provided that all outstanding civil penalties, and permit or other fees, have been paid in full, and all outstanding correction notices have been satisfactorily resolved. For electrical contractors and specialty electrical contractors, proof of liability insurance in the amount of three hundred thousand dollars (\$300,000) shall also be required, and proof of worker's compensation insurance shall be required if applicable.

(2) Any license which has expired may be revived at any time within one (1) year from the last day of the final month of the licensing period, by payment of the revival fee herein specified, together with all outstanding civil penalties, and permit or other fees and penalties, and upon proof that outstanding correction notices have been satisfactorily resolved. For electrical contractors and specialty electrical contractors, proof of liability insurance in the amount of three hundred thousand dollars (\$300,000) shall also be required, and proof of worker's compensation insurance shall be required if applicable.

(3) Certificates of competency issued prior to July 1, 1961, shall, for the purpose of this chapter, be considered as licenses and may be renewed or revived as herein provided.

(4) The administrator may renew, on an inactive basis, the license of an electrical contractor or specialty contractor who is not engaged in electrical contracting in this state. The board shall fix and collect an inactive license fee for such an inactive license renewal in an amount not to exceed one hundred fifty dollars (\$150). Each inactive license shall be issued for a

period of one (1) year. An electrical contractor or specialty contractor holding an inactive license may not engage in the practice of electrical contracting or specialty contracting in this state. If an electrical contractor or specialty contractor wishes to convert his inactive license to an active license, he may do so by paying a processing fee of thirty dollars (\$30.00) and providing proof of the required liability insurance and applicable worker's compensation insurance.

History.
1947, ch. 251, § 13, p. 681; am. 1961, ch. 311, § 14, p. 583; am. 1986, ch. 307, § 1, p. 758; am. 1999, ch. 100, § 1, p. 315; am. 2000,

ch. 242, § 4, p. 676; am. 2002, ch. 53, § 2, p. 119; am. 2005, ch. 82, § 2, p. 294; am. 2006, ch. 83, § 2, p. 245; am. 2009, ch. 112, § 3, p. 364; am. 2011, ch. 16, § 2, p. 52.

STATUTORY NOTES

Cross References.
Administrator of division of building safety, § 67-2601A.
Military exemption from fees, § 67-2602A.

first day of the final month" in the first sentence of subsection (2).
The 2011 amendment, by ch. 16, inserted "or registrations" in the section heading and near the beginning of subsection (1); and, in the first sentence in subsection (1), substituted "satisfaction of applicable continuing education" for "satisfaction of continuing education" and inserted "proof of satisfaction of applicable apprentice and specialty trainee instruction and work requirements as established by the electrical board."

Amendments.
The 2006 amendment, by ch. 83, inserted "Inactive licenses" at the end of the section heading and added subsection (4).
The 2009 amendment, by ch. 112, substituted "last day of the final month" for "the

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 33.

54-1013A. **Renewal of certain licenses issued prior to July 1, 2002.**
[Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised I.C., § 54-1013A, as added by 2002, ch. 53, § 3, p. 119,

was repealed by S.L. 2006, ch. 82, § 2. See § 54-1013.

54-1014. Fees. — The administrator of the division of building safety shall charge the following fees:

(1) Application for license	\$ 15.00
(2) One-year licenses:	
(a) Electrical contractor license	\$125.00
(b) Electrical contractor license renewal	100.00
(c) Electrical contractor license revival	125.00
(d) Specialty contractor license	125.00
(e) Specialty contractor license renewal	100.00
(f) Specialty contractor license revival	125.00
(3) Three-year licenses, in accordance with sections 54-1008 and 54-1013, Idaho Code:	

- (a) Master electrician license \$65.00
- (b) Master electrician license renewal 45.00
- (c) Master electrician license revival 55.00
- (d) Journeyman electrician license 55.00
- (e) Journeyman electrician license renewal 45.00
- (f) Journeyman electrician license revival 55.00
- (g) Specialty journeyman electrician license 55.00
- (h) Specialty journeyman electrician license renewal 45.00
- (i) Specialty journeyman electrician license revival 55.00
- (j) Specialty trainee registration and working license 30.00
 - (i) At the time the specialty trainee applies for a specialty journeyman electrician license, the pro rata value of any remaining time on a specialty trainee working license shall be credited toward the purchase of the specialty journeyman electrician license.
- (4) Five-year licenses, in accordance with sections 54-1008 and 54-1013, Idaho Code:
 - (a) Apprentice electrician registration and working license \$50.00
 - (i) At the time the apprentice applies for a journeyman electrician license, the pro rata value of any remaining time on an apprentice electrician working license shall be credited toward the purchase of the journeyman electrician license.

History.

1947, ch. 251, § 14, p. 681; am. 1961, ch. 311, § 15, p. 583; am. 1974, ch. 39, § 87, p. 1023; am. 1986, ch. 191, § 1, p. 487; am. 1996, ch. 421, § 47, p. 1406; am. 1999, ch. 99, § 6, p. 311; am. 1999, ch. 367, § 8, p. 968; am. 2002, ch. 53, § 4, p. 119; am. 2006, ch. 82, § 3, p. 244; am. 2009, ch. 112, § 4, p. 364.

STATUTORY NOTES

Cross References.

Administrator of division of building safety, § 67-2601A.

Amendments.

This section was amended by two 1999 acts — ch. 99, § 6 and ch. 367, § 8, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 99, § 6, substituted “Master electrician’s” for “Master journeyman electrician’s” in the last three entries of the fee table, substituted “15.00” for “25.00” and “25.00” for “35.00” in the last two entries.

The 1999 amendment, by ch. 367, § 8, inserted “specialty trainee” preceding “registration and working license.”

The 2006 amendment, by ch. 82, substituted “54-1008 and 54-1013” for “54-1008, 54-1013 and 54-1013A” in subsection (3); and deleted former subsection (4), which read: “For licenses issued or renewed pursuant to section 54-1013A, Idaho Code, the administrator of the division of building safety shall prorate the fees set forth in subsection (3) of this section for the actual number of months the license will be in effect.”

The 2009 amendment, by ch. 112, deleted former subsection (2)(d) which read: “Apprentice/specialty trainee registration and working license 10.00”, redesignated subsections (2)(f) and (2)(g) as subsections (2)(e) and (2)(f) and added subsections (3)(j) and (4).

Compiler’s Notes.

Paragraph (3)(j) and subsection (4) are set out exactly as enacted in 2009. There is no paragraph (3)(j)(iii) nor paragraph (4)(a)(ii) nor paragraph (4)(b).

54-1015. Electrical board fund established. — All money received by the administrator, under the terms and provisions of this chapter, shall be paid into the state treasury as directed by the provisions of section 59-1014, Idaho Code, and shall be, by the state treasurer, placed to the credit of a dedicated fund to be known as the electrical board fund and all

such moneys, hereafter placed in said fund, are hereby set aside and appropriated to the division of building safety to carry into effect the provisions of this chapter.

History.

1947, ch. 251, § 15, p. 681; am. 1961, ch. 311, § 16, p. 583; am. 1974, ch. 39, § 88, p.

1023; am. 1984, ch. 123, § 35, p. 281; am. 1996, ch. 421, § 48, p. 1406; am. 2010, ch. 122, § 1, p. 269.

STATUTORY NOTES**Cross References.**

Administrator of division of building safety, § 67-2601A.

substituted “chapter” for “act” and substituted “paid into the state treasury as directed by the provisions of section 59-1014, Idaho Code” for “paid into the state treasury monthly.”

Amendments.

The 2010 amendment, by ch. 121, twice

54-1016. Exemptions. — (1) Nothing in this chapter shall be deemed to apply to:

(a) Any regulated utility, telephone company, rural telephone cooperative or municipal communications utility, or its employees, in the installation or maintenance of communication circuits, wires and apparatus by or for such entities or their communications service customers;

(b) Any electrical public utility, or its employees, in the installation and maintenance of electrical wiring, circuits, apparatus and equipment by or for such public utility, or comprising a part of its plants, lines or system;

(c) Modular buildings as defined in section 39-4301, Idaho Code, that are constructed in the state of Idaho for installation on building sites outside the state; provided however, that no modular building shall be installed on a building site in the state of Idaho until it has been approved and bears the insignia of approval of the division as being in compliance with the requirements set forth in section 39-4304, Idaho Code.

(2) The licensing provisions of this chapter shall not apply to:

(a) Any property owner performing electrical work in the owner’s primary or secondary residence or associated outbuildings;

(b) Any person regularly employed as a maintenance electrician performing electrical maintenance work on the premises of the person’s employer;

(c) Any telephone company, rural telephone cooperative, or municipal communications utility, its employees, its subsidiaries, and employees of the subsidiaries performing work on customer-owned facilities under the exclusive control of the telephone company, rural telephone cooperative, or municipal communications utility;

(d) Any telephone company, rural telephone cooperative, or municipal communications utility, its employees, its subsidiaries, and employees of the subsidiaries performing repair work on customer-owned facilities at the request of the customer;

(e) Any electrical public utility, rural electrical cooperative, municipal power utility, its employees, its subsidiaries, and employees of the subsidiaries performing work on customer-owned facilities under the exclusive control of the electrical public utility, rural electrical cooperative, or municipal power utility; and

(f) Any electrical public utility, rural electrical cooperative, municipal power utility, its employees, its subsidiaries, and employees of the subsidiaries performing emergency repair work on customer-owned facilities at the request of the customer.

(3) The licensing provisions of this chapter shall not apply to individuals licensed pursuant to chapter 50, title 54, Idaho Code, or certificated pursuant to chapter 26, title 54, Idaho Code, as follows:

(a) Individuals holding a current heating, ventilation and air conditioning (HVAC) license or a current plumbing certification may install electrical circuitry from the disconnecting means to a water heater and electrical connections to the water heater as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the water heater is no more than fifty (50) feet long.

(b) Individuals holding a current HVAC license may install:

(i) Electrical space heaters with no attached ductwork;

(ii) Electrical connections to HVAC equipment from the disconnecting means to the unit as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the HVAC equipment is no more than fifty (50) feet long; and

(iii) Ventilating fans, except ducted range hoods in residences.

(c) HVAC licensees may install control wiring of twenty-four (24) volt or less for HVAC equipment of five (5) tons or less in capacity. Plumbing certificate holders are not authorized to install control wiring in HVAC equipment, regardless of voltage.

(4) To the extent that a plumbing or HVAC installation permit issued by the Idaho division of building safety includes any part of an electrical installation, the permit issued and inspection performed shall be sufficient to satisfy the permitting and inspecting requirements of this chapter if all required permit fees have been paid.

History.

1947, ch. 251, § 16, p. 681; am. 1961, ch. 311, § 17, p. 583; am. 2004, ch. 250, § 6, p.

715; am. 2005, ch. 235, § 1, p. 715; am. 2007, ch. 197, § 1, p. 597; am. 2007, ch. 252, § 8, p. 737.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

The 2007 amendment, by ch. 252, updated the section references in subsection (1)(c).

Amendments.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 197, added subsections (3) and (4).

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

54-1017. Violations of act a misdemeanor. — Any person, partnership, company, firm, association or corporation who shall engage in the trade, business or calling of an electrical contractor, journeyman electrician, master electrician, specialty electrician, specialty electrical contractor, specialty electrical trainee or apprentice electrician without a license or

required registration as provided for by this act, or who shall violate any of the provisions of this act, or the rules of the Idaho electrical board or of the administrator of the division of building safety herein provided for, or who shall refuse to perform any duty lawfully enjoined upon him by the administrator within the prescribed time; or who shall fail, neglect, or refuse to obey any lawful order given or made by the administrator shall be guilty of a misdemeanor and shall be subject to the civil penalties established by administrative rule but not to exceed one thousand dollars (\$1,000). Each day of such violation shall constitute a separate offense. A violation will be considered a second or additional offense only if it occurs within one (1) year from the first violation.

History.

1947, ch. 251, § 17, p. 681; am. 1961, ch. 311, § 18, p. 583; am. 1974, ch. 39, § 89, p. 1023; am. 1984, ch. 123, § 36, p. 281; am.

1996, ch. 421, § 49, p. 1406; am. 1999, ch. 169, § 2, p. 457; am. 1999, ch. 367, § 9, p. 968; am. 2000, ch. 39, § 3, p. 77.

STATUTORY NOTES**Cross References.**

Administrator of division of building safety, § 67-2601A.

Amendments.

This section was amended by two 1999 acts — ch. 169, § 2 and ch. 367, § 9, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 169, § 2, inserted “and shall be subject to the civil penalties established by administrative rule but not to exceed one thousand dollars (\$1,000)” at the end of the first sentence and added the current last sentence.

The 1999 amendment, by ch. 367, § 9, inserted “master journeyman electrician, specialty electrician, specialty electrical contractor, specialty electrical trainee or apprentice

electrician” following “journeyman electrician” and inserted “or required registration” following “without a license”.

Compiler's Notes.

The words “this act” refer to S.L. 1947, ch. 251, which is codified as §§ 54-1001, 54-1002, 54-1003, 54-1005, 54-1007 to 54-1009, 54-1013, and 54-1014 to 54-1018.

Effective Dates.

Section 97 of S.L. 1974, ch. 39 provided the act should be in full force and effect on and after July 1, 1974.

Section 40 of S.L. 1984, ch. 123 declared an emergency. Approved March 31, 1984.

Section 4 of S.L. 2000, ch. 39 provided that the act shall be in full force and effect on and after July 1, 2000.

JUDICIAL DECISIONS

Cited in: Grayot v. Summers, 75 Idaho 125, 269 P.2d 765 (1954).

54-1018. Separability. — If any clause, sentence, section, provision or part of this act shall be adjudged to be unconstitutional or invalid for any reason, by any court of competent jurisdiction, such judgment shall not impair, affect or invalidate the remainder of this act which shall remain in full force and effect thereafter.

History.

1947, ch. 251, § 18, p. 681.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1947, ch. 251, which is codified as §§ 54-1001, 54-1002,

54-1003, 54-1005, 54-1007 to 54-1009, 54-1013, and 54-1014 to 54-1018.

54-1019. Qualifications of inspectors. — The administrator of the division of building safety shall appoint the number of deputy electrical inspectors as may be required for the effective enforcement of the provisions of this chapter. All inspectors shall be skilled in electrical installations with not less than four (4) years of actual experience as a journeyman electrician, shall possess certificates of competency prior to appointment, and shall be fully familiar with the provisions of this chapter and rules made both by the administrator and the Idaho electrical board. No inspector employed by the division of building safety and assigned to the enforcement of the provisions of this chapter shall be engaged or financially interested in an electrical business, trade, practice or work, or the sale of any supplies connected therewith, nor shall he act as an agent, directly or indirectly, for any person, firm, copartnership, association or corporation so engaged. Inspectors employed by municipalities electing to claim exemption under this chapter must possess the qualifications set forth in this section. Inspectors employed by the division of building safety shall take and pass, before the end of their probationary period, the general inspector's test administered by the educational testing service, or future tests developed by the educational testing service for that purpose, or such examination developed for similar purposes, and administered by another testing agency, which the Idaho electrical board may select. The board may also promulgate rules relative to the applicability of this provision to existing electrical inspectors with permanent status in the division.

History.

I.C., § 54-1019, as added by 1986, ch. 308, § 1, p. 759; am. 1996, ch. 421, § 50, p. 1406.

STATUTORY NOTES

Cross References.

Administrator of building safety, § 67-2601A.

Idaho electrical board, § 54-1006.

Compiler's Notes.

For more on educational testing service, see <http://www.ets.org>.

54-1020. Specialty electricians — Examination and licensing — Rules — Licensure authority exclusive to the state. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

This section derived from S.L. 1998, ch. 401, § 1.

Section 3 of S.L. 1998, ch. 401 provided:

"The provisions of this act shall be null, void and of no force and effect on and after June 30, 1999."

CHAPTER 11

MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS

SECTION.

- 54-1101. Public interest and concern in disposition of human bodies.
- 54-1102. Definitions.
- 54-1103. Persons required to have licenses.
- 54-1104. Exemptions from provisions of chapter.
- 54-1105. Board of morticians.
- 54-1106. Powers and duties of board.
- 54-1107. Powers and duties of bureau chief.
- 54-1108. Examination of applicants for license — Subjects — Certification of results.
- 54-1109. Requirements for mortician license — Requirements for funeral director license — License by endorsement.
- 54-1110. [Repealed.]
- 54-1111. Requirements for establishment license — Cancellation — Records — Operation by legal representative of estate.
- 54-1112. Requirements for resident trainee license.
- 54-1113. Application for license — Form and contents — Certified copies of documents showing qualifications.
- 54-1114. [Repealed.]
- 54-1115. License fees.
- 54-1115A. Annual renewal — Reinstatement.
- 54-1116. Denial, suspension, or revocation of licenses — Grounds — Probation.
- 54-1117. Written complaint — Procedure for suspension or revocation of license.
- 54-1118. Sending body to an establishment without inquiry prohibited — Exceptions — Anatomical gifts — Authority regarding disposition.

SECTION.

- 54-1119. Authority of department of health and welfare to control handling of dead bodies — Rules and regulations.
- 54-1120. Receiving body for transportation outside state without permit prohibited — Cremation and removal of human remains.
- 54-1121. Accounting procedure — Income and expenses.
- 54-1122 — 54-1126. [Repealed.]
- 54-1127. Injunction against violations of act — Venue.
- 54-1128. Violations constituting misdemeanors — Exceptions — Enforcement.
- 54-1129. Declaration of intent.
- 54-1130. Scope and exceptions.
- 54-1131. Definitions.
- 54-1132. Certificate of authority — Requirements — Display of certificate.
- 54-1133. Form and content of contract — Price disclosure.
- 54-1134. Prearrangement trust fund deposits.
- 54-1135. Cancellation of contract — Refund of trust deposits.
- 54-1136. Solicitation — Limitations.
- 54-1137. Substitutions — Merchandise, services or provider.
- 54-1138. Enforcement penalty — Disclosure of contracts upon sale of business.
- 54-1139. Instructions for disposition of person's remains.
- 54-1140. Person's directions to be followed — Exception.
- 54-1141. Survivor's services.
- 54-1142. Authority in absence of or uncovered provisions in a prearranged funeral plan.
- 54-1143. Right to rely.
- 54-1144. Unclaimed remains of veterans.

54-1101. Public interest and concern in disposition of human bodies. — The practice and processes involved in processing and making final disposition of human bodies is hereby declared to affect the public interest, health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the processes involved in preparing and making final disposition of human bodies should be so controlled as to protect the public interest and merit the confidence of the public, and to that end that only qualified persons be permitted to practice such acts in the state of

Idaho. This act shall be liberally construed to carry out these objects and purposes.

History.

1970, ch. 70, § 1, p. 167.

STATUTORY NOTES

Prior Laws.

Former §§ 54-1101 to 54-1123, which comprised S.L. 1909, p. 167, §§ 1 to 10; am. 1911, ch. 150, § 1, p. 455; reen. C.L. 89:1 to 89:10; C.S., §§ 2198 to 2207; am. 1925, ch. 32, § 2, subd. 2199-A to 2199-C, p. 43; am. 1927, ch. 243, §§ 5 to 7, p. 369; I.C.A., §§ 53-1401 to 53-1412; I.C.A., §§ 53-1401a, 53-1406a, 53-1406b, as added by 1937, ch. 129, §§ 2, 5, p. 194; am. 1937, ch. 129, §§ 1, 3, 4, 6, p. 194; 1939, ch. 19, §§ 1 to 5, p. 47; 1955, ch. 191, §§ 1 to 4, p. 412; am. 1955, ch. 131, § 1, p. 269; am. 1957, ch. 69, § 1, p. 116; am. 1959,

ch. 294, § 1, p. 608; am. 1963, ch. 116, § 1, p. 342; 1963, ch. 156, § 1, p. 457; I.C.A., §§ 54-1122, 54-1123, as added by 1965, ch. 129, §§ 1, 2, p. 256; am. 1965, ch. 164, § 6, p. 317; am. 1965, ch. 201, § 4, p. 446, were repealed by S.L. 1970, ch. 70, § 28.

Compiler's Notes.

The words "this act" refer to S.L. 1970, ch. 70, compiled as §§ 54-1101 to 54-1109, 54-1111 to 54-1113, 54-1115, 54-1116 to 54-1121, 54-1127, and 54-1128. The reference probably should be to "this chapter".

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, § 1 et seq.

A.L.R. — Liability of owner or operator of funeral home for injury sustained by patron or invitee due to condition of premises. 14 A.L.R.3d 629.

Liability in damages for withholding corpse from relatives. 48 A.L.R.3d 240.

Civil liability of undertaker in connection with embalming or preparation of body for burial. 48 A.L.R.3d 261.

Enforcement of preference expressed by decedent as to disposition of his body after death. 54 A.L.R.3d 1037.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body. 81 A.L.R.3d 1071.

Funeral home as private nuisance. 8 A.L.R.4th 324.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of service contract. 54 A.L.R.4th 901.

54-1102. Definitions. — As used in this act:

(1) "Board" means the state board of morticians of the state of Idaho or any successor thereof.

(2) "Bureau chief" means the chief of the bureau of occupational licenses.

(3) "Burial" means the interment or entombment of dead human bodies in any manner.

(4) "Cremains" means human remains after cremation.

(5) "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.

(6) "Crematory" means a building or structure containing one (1) or more retorts for the reduction of bodies of deceased persons to cremated remains.

(7) "Columbarium" means a structure, room or other space in a building or structure containing niches for permanent inurnment of cremains.

(8) "Department" means the department of self-governing agencies of the state of Idaho.

(9) "Embalming" means the disinfecting, preparing or preserving for final disposition of dead human bodies, in whole or in part, or any attempt to do

so, by the use or application of chemical substances, fluids or gases on the body, or by the introduction of the same into the body by vascular or hypodermic injection or by direct introduction into organs or cavities, or by any other method or process.

(10) "Establishment" means any funeral establishment or crematory establishment regulated by the board of morticians.

(11) "Funeral director" means any person engaged in or conducting, or holding himself out as engaged in or conducting, any of the following activities:

- (a) Directing or supervising the burial, cremation or disposal of dead human bodies.
- (b) Arranging for funeral services for dead human bodies.
- (c) Selling funeral goods and services to the public.
- (d) Conducting, directing or supervising a funeral service.

(12) "Funeral director license" means a yearly license issued by the board to act as a funeral director and perform funeral director services as defined in this chapter.

(13) "Funeral director services" means the services of a funeral director defined in subsection (11) of this section. Funeral director services do not include embalming.

(14) "Funeral establishment" means a place of business at a specific street address or location devoted to the embalming and care and preparation for burial or disposal of dead human bodies including all portions of such business premises and all tools, instruments and supplies used in the preparation and embalming of dead human bodies for burial or disposal, and including any chapel or other facility in which funeral or other religious services may be conducted.

(15) "Funeral establishment license" means a yearly license issued by the board authorizing the licensee to conduct a funeral establishment as defined in this chapter.

(16) "Funeral services" means any funeral or religious service conducted in connection with, or preparatory to, the burial or disposal of a dead human body.

(17) "Funeral supplies" means caskets, vaults, burial receptacles and any other personal property sold for use in the burial or disposal of a human body.

(18) "Human remains" means the body of a deceased person in any condition or state of decomposition including cremated remains.

(19) "Mortician" means any person engaged in or conducting, or holding himself out as engaged in or conducting, any of the following activities:

- (a) Caring for or preparing dead human bodies for burial, cremation or disposal.
- (b) Disinfecting or preparing dead human bodies by embalming, or otherwise, for funeral service, transportation, burial, cremation or disposal.
- (c) Directing or supervising the burial, cremation or disposal of dead human bodies.
- (d) Arranging for funeral services for dead human bodies.

- (e) Selling funeral goods and services to the public.
- (f) Conducting, directing or supervising a funeral service.
- (20) "Mortician license" means a yearly license issued by the board to act as a mortician and perform mortician services as defined in this chapter.
- (21) "Mortician services" means the services of a mortician defined in subsection (19) of this section.
- (22) "Resident trainee" means a person who is engaged in preparing to become licensed as a mortician or funeral director, and who practices under the direct and immediate personal supervision of a licensed mortician pursuant to rules adopted by the board.
- (23) "Resident trainee license" means a yearly license issued by the board to act as a licensed resident trainee and perform services under the direct personal supervision of a licensed mortician as defined in this chapter.

History.

1970, ch. 70, § 2, p. 167; am. 1974, ch. 13, § 91, p. 138; am. 2003, ch. 257, § 1, p. 664.

STATUTORY NOTES

Cross References.

Chief of bureau of occupational licenses, § 67-2603.
Department of self-governing agencies, § 67-2601.
State board of morticians, § 54-1105.

Prior Laws.

Former § 54-1102 was repealed. See Prior Laws, § 54-1101.

Compiler's Notes.

The words "this act", in the introductory paragraph, refer to S.L. 1970, ch. 70, compiled as §§ 54-1101 to 54-1109, 54-1111 to 54-1113, 54-1115, 54-1116 to 54-1121, 54-1127, and 54-1128. The reference probably should be to "this chapter".

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, §§ 1, 2.

- 54-1103. Persons required to have licenses.** — (1) It shall be unlawful for any person to perform, offer to perform or hold himself out as performing mortician services or any of the acts of a mortician, unless he shall first obtain a mortician license or resident trainee license as provided in this chapter; and it shall be unlawful for a licensed resident trainee to perform mortician services or any of the acts of a mortician except under the personal supervision of a resident mortician licensed under this chapter.
- (2) It shall be unlawful for any person to perform, offer to perform or hold himself out as performing funeral director services unless he has a funeral director license or resident trainee license as provided in this chapter.
- (3) It shall be unlawful for any person to operate a funeral establishment or crematory without first obtaining the valid establishment licenses as provided in this chapter.

History.

1970, ch. 70, § 3, p. 167; am. 2003, ch. 257, § 2, p. 664.

STATUTORY NOTES

Prior Laws.

Former § 54-1103 was repealed. See Prior Laws, § 54-1101.

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, § 6 et seq.

54-1104. Exemptions from provisions of chapter. — There is hereby exempted from the terms and provisions of this chapter and from the enforcement of the provisions hereof, the following:

(1) Manufacturers, wholesalers and jobbers of caskets, funeral supplies, vaults or other burial receptacles not engaged in performing mortician services and not selling to the public, except when said sales to the public are sales with immediate delivery of the funeral supplies purchased.

(2) Cemeteries selling vaults or burial receptacles to the public.

(3) Any duly authorized representative of any church, fraternal order or other association or organization honoring the dead who performs a funeral or other religious service under the authority of and pursuant to the religious tenets or practices of such organization. This exemption does not authorize, permit or allow such person to perform the functions of a mortician or funeral director under section 54-1102 (11) or (19), Idaho Code, unless he shall be licensed as required by law.

(4) Notwithstanding any other provision of law, the person having the right to control the disposition of the remains of the deceased person pursuant to section 54-1142, Idaho Code, or such person's designee, or a licensed funeral director, may initiate the process of cremation by operation of the retort while under the direct personal supervision of a licensed mortician.

History.

1970, ch. 70, § 4, p. 167; am. 1972, ch. 113, § 1, p. 228; am. 1995, ch. 112, § 1, p. 381; am. 2003, ch. 257, § 3, p. 664.

STATUTORY NOTES

Prior Laws.

Former § 54-1104 was repealed. See Prior Laws, § 54-1101.

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, § 6 et seq.

54-1105. Board of morticians. — There is hereby established in the department of self-governing agencies a state board of morticians to be composed of three (3) members appointed by the governor in the manner hereinafter set forth. Each member of the board shall be a duly licensed mortician under the laws of the state of Idaho and a resident of the state of

Idaho for a period of at least five (5) years next preceding his appointment, during which time he shall have been continuously engaged in the practice as a mortician as defined in this chapter. No person shall be eligible for appointment to the board of morticians who is financially interested, directly or indirectly, in any embalming college, wholesale funeral supply business, or casket manufacturing business.

The governor shall appoint the members of the board from a list of qualified morticians of triple the number of persons to be appointed, who shall be proposed and submitted to him by the Idaho funeral service association, or other statewide organization or association of licensed morticians whose membership is composed of a majority of all licensed morticians of the state.

All members of the board of morticians shall be appointed to serve for a term of three (3) years, to expire on May 1 of the year of termination of their term, and until their successors have been appointed and qualified; provided however, the governor is hereby granted the power to alter the term of office of the members of the board first appointed hereunder so that the term of office of not more than one (1) member of the board shall terminate in any one (1) year. In case of a vacancy occurring on said board of morticians by reason of the death of any member, or his resignation, incapacity, neglect or refusal to act, or in any other way, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office from a list of duly qualified morticians prepared and submitted in the manner prescribed herein for the initial appointment of members to the board. Any member of the board of morticians who willfully fails to properly discharge his duties may be removed by the governor.

The board shall meet, not less than annually, to elect a chairman, vice chairman and secretary and take official board action on pending matters by majority vote of all the members of the board of morticians, and in doing so a majority of the members of said board shall at all times constitute a quorum. Notice of any meeting shall be given by the chairman to all members of the board at least ten (10) days in advance of each meeting unless such notice is waived in writing by all of the members of the board.

Each member of the board of morticians shall be compensated as provided by section 59-509(m), Idaho Code.

History.

1970, ch. 70, § 5, p. 167; am. 1974, ch. 13, § 92, p. 138; am. 1976, ch. 166, § 12, p. 596;

am. 1980, ch. 247, § 58, p. 582; am. 2010, ch. 156, § 1, p. 331.

STATUTORY NOTES**Cross References.**

Department of self-governing agencies, § 67-2601.

Prior Laws.

Former § 54-1105 was repealed. See Prior Laws, § 54-1101.

Amendments.

The 2010 amendment, by ch. 156, in the

first paragraph, substituted "chapter" for "act" and "casket manufacturing business" for "casket manufacture business"; in the second paragraph, deleted "provided, however, all members of the board of embalming examiners existing as of the effective date of this act are hereby automatically appointed as members of the board of morticians to serve for the remainder of their appointed terms" from the

end; and "section 59-509(m)" for "section 59-509(g)" at the end of the last paragraph.

Compiler's Notes.

For more on Idaho funeral service associations, see <http://www.ifsu.us>.

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, §§ 3 to 5.

54-1106. Powers and duties of board. — The state board of morticians shall have the following powers and duties:

(1) To prepare, conduct, and grade examinations of applicants for licenses.

(2) To certify the results of examinations of applicants and certify the applicant as having "passed" or "failed."

(3) To conduct hearings and proceedings in connection with the suspension or revocation of licenses.

(4) To make findings and recommendations to the governor on any and all matters relating to the enforcement of the provisions of this chapter.

(5) To perform all other duties and exercise all other powers granted under this chapter, or the laws of the state of Idaho.

(6) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

(7) To provide for the licensure and regular inspection of funeral establishments and crematories.

History.

1970, ch. 70, § 6, p. 167; am. 1974, ch. 13, § 93, p. 138; am. 1996, ch. 174, § 7, p. 558; am. 2003, ch. 257, § 4, p. 664.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-1106 was repealed. See Prior Laws, § 54-1101.

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, §§ 3 to 5.

54-1107. Powers and duties of bureau chief. — The chief of the bureau of occupational licenses, shall have the following powers and duties under this act:

A. To determine and pass upon the qualifications of applicants for all licenses under this act.

B. To issue all licenses provided for under the provisions of this act.

C. To annually renew licenses under this act.

D. To collect all fees prescribed and required herein.

E. To conduct hearings and proceedings for the suspension or revocation of licenses and to suspend or revoke any license for any of the causes hereinafter defined and set forth under this act; provided, however, that the bureau chief shall not revoke or suspend any license without first receiving written findings and recommendations from the board of morticians.

F. To keep general books of record of all official acts, proceedings and transactions of the board while acting under this act, including the following:

(1) A cash book showing in detail all receipts and disbursements for the board received or expended under this act.

(2) A special register containing the names and addresses of all applicants, the date the application was received, the result of the examination, and whether the applicant received a license or was rejected, and a full statement of the reasons therefor.

(3) All books of record kept shall be prima facie evidence of all matters therein recorded, and shall be public records.

G. To prescribe rules for the implementation and enforcement of the provisions of this act.

H. To publish and distribute copies of this act and the rules issued by the board to applicants, licensees and the public.

I. To perform all duties and exercise all powers granted under chapter 3, title 27, Idaho Code.

History.

1970, ch. 70, § 7, p. 167; am. 1974, ch. 13, § 94, p. 138; am. 1996, ch. 174, § 8, p. 558.

STATUTORY NOTES

Cross References.

Chief of bureau of occupational licenses, § 67-2603.

Prior Laws.

Former § 54-1107 was repealed. See Prior Laws, § 54-1101.

Compiler's Notes.

The words "this act" refer to S.L. 1970, ch. 70, compiled as §§ 54-1101 to 54-1109, 54-

1111 to 54-1113, 54-1115, 54-1116 to 54-1121, 54-1127, and 54-1128. The reference probably should be to "this chapter".

Chapter 3, title 27, Idaho Code, referred to in subsection I, was repealed by S.L. 2003, ch. 218, § 1, effective July 1, 2003. The statement of purpose for S.L. 2003, Chapter 218 stated that the repeal was to consolidate the crematorium and mortician laws under this chapter.

54-1108. Examination of applicants for license — Subjects — Certification of results. — The board of morticians shall have the sole power for determining the nature, type and extent of examinations to be taken by applicants for a license. Examinations for mortician applicants shall include generally the following subjects: anatomy, chemistry, physiology, psychology, sanitary science, the care, disinfection, preservation, transportation of and burial, or other final disposition of dead human bodies, and the laws and rules of the state of Idaho. Examinations for funeral director applicants shall include generally the following subjects: sociology, psychology, funeral directing, business law, funeral service law, funeral service merchandising, accounting, computers, and the laws and rules of the state of Idaho. The board shall determine whether the applicant has passed or

failed such examination. Examinations may be written or as determined at the discretion of the board, and shall be held at such times and at such places within the state of Idaho as determined by the board of morticians. National conference examinations, passed at an accredited embalming college, may be accepted by the board. Upon the conclusion of grading the above examinations, the board of morticians shall certify the results listing each applicant as having failed or passed the examination, and such determination shall not be subject to review.

History.

1970, ch. 70, § 7A, p. 167; am. 1974, ch. 13, § 95, p. 138; am. 1983, ch. 32, § 1, p. 81; am.

2001, ch. 136, § 1, p. 495; am. 2003, ch. 257, § 5, p. 664.

STATUTORY NOTES**Cross References.**

Public health and safety laws, § 39-101 et seq.

Prior Laws.

Former § 54-1108 was repealed. See Prior Laws, § 54-1101.

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, § 12.

54-1109. Requirements for mortician license — Requirements for funeral director license — License by endorsement. — (1) The board shall issue to any person a mortician's license to practice as a mortician and perform mortician services within the state of Idaho who has complied with and fulfilled all of the following requirements:

- (a) Has attained the age of twenty-one (21) years.
- (b) Is of good moral character.
- (c) Has completed and received credit for at least sixty (60) semester hours' or ninety (90) quarter-hours' instruction in a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all of such credits must be for courses in the fields of liberal arts, business or science as defined and specified by the board of morticians.
- (d) Has successfully completed a course in an embalming school accredited by the American board of funeral service education, inc., or such other embalming school as approved by the board of morticians.
- (e) Has practiced as a licensed resident trainee in the state of Idaho under the personal supervision of a licensed resident mortician for not less than twelve (12) months, and has assisted in embalming at least twenty-five (25) dead human bodies and assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals; provided, however, such practice as a licensed resident trainee of the state of Idaho may be filled and performed either before or after the required post-high school education.
- (f) Has filed an application with the board as required by this chapter and paid the required filing fee therefor.
- (g) Has passed the required examination prepared and conducted by the

board of morticians. Provided further, that the board shall determine compliance with all of the above qualifications, except this paragraph relating to examinations, at the time the applicant files his application as hereinafter provided and before the examination is conducted by the board of morticians.

(2) The board shall issue to any person a funeral director license to practice as a funeral director and perform funeral director services within the state of Idaho who has complied with and fulfilled all of the following requirements:

(a) Has attained the age of twenty-one (21) years.

(b) Is of good moral character.

(c) Has completed and received at least sixty (60) semester hours' or ninety (90) quarter-hours' instruction from a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in the fields of liberal arts, business or science as defined and specified by the board.

(d) Has successfully completed at least fifteen (15) semester credit hours or the equivalent from a mortuary college accredited by the American board of funeral service education, inc., or such credits as are otherwise approved by the board, with course of study to include business law, psychology, sociology, funeral service counseling, funeral service management and other classes that relate to conducting funeral business.

(e) Has practiced as a licensed trainee in the state of Idaho under the personal supervision of a licensed mortician for not less than twelve (12) months, and has assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals.

(f) Has successfully passed the required examination as established by the rules of the board. An applicant shall not be qualified to take the examination until all other requirements have been met.

(g) Has filed an application with the board as required by this chapter and paid the required fees.

(3) Any person holding a current, valid license in another state or territory having substantially similar requirements to those existing in this state, may be granted a license without examination, provided:

(a) The applicant files with the board a certified statement from the examining board of the state or territory in which the applicant holds his license, verifying the license and showing the basis upon which the license was granted; and

(b) The applicant pays the license fee; and

(c) The applicant satisfies the board that he understands the laws and rules of this state as to funeral service.

(4) A person holding a current, valid license in another state or territory with requirements significantly lower than those of this state who has at least five (5) consecutive years of experience as a licensee in the other state or territory prior to application, may apply for a license to practice in this state without meeting the full requirements of subsection (1) or (2) of this section. Upon payment of the license fee and passing such test of proficiency

as the board shall require including, but not limited to, a knowledge of the laws and administrative rules of this state as to funeral service, the board shall grant a license.

History.

1970, ch. 70, § 8, p. 167; am. 1974, ch. 13, § 96, p. 138; am. 1978, ch. 166, § 1, p. 364;

am. 1983, ch. 32, § 2, p. 81; am. 2003, ch. 257, § 6, p. 664; am. 2005, ch. 47, § 1, p. 178; am. 2008, ch. 109, § 1, p. 307.

STATUTORY NOTES

Cross References.

Military exemption to license fees, § 67-2602A.

Prior Laws.

Former § 54-1101 was repealed. See Prior Laws, § 54-1101.

Amendments.

The 2008 amendment, by ch. 109, inserted

“and assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals” in paragraph (1)(e).

Compiler’s Notes.

For more on the American board of funeral service education, see <http://abfse.org>.

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, § 6 et seq.

54-1110. Renewal of existing funeral director licenses. [Repealed.]

STATUTORY NOTES

Compiler’s Notes.

This section, which comprised 1970, ch. 70, § 9, p. 167; am. 1974, ch. 13, § 97, p. 138, was

repealed by S.L. 2003, ch. 257, § 7. See § 54-1115A.

54-1111. Requirements for establishment license — Cancellation — Records — Operation by legal representative of estate. — (1) The board shall issue a funeral establishment license or crematory establishment license to any person, partnership, association, corporation or other organization to operate at specific locations only, which has met the following requirements:

- (a) That the applicant, if an individual, is a licensed mortician or funeral director under this chapter and is a resident of the state of Idaho.
- (b) That the applicant has not been refused a license as a mortician or funeral director, or its equivalent, or for an establishment, or its equivalent; or had a personal or establishment license revoked in Idaho or in any other state.
- (c) That the applicant has designated the name under which the establishment will operate and has designated a location for which the establishment license is to be issued.
- (d) That the applicant has at least one (1) mortician licensed under this chapter who is a resident of the state of Idaho and who is, and will be, in the employ or service of the establishment.
- (e) That the applicant has filed an application and paid the required filing fee. Provided further, that the board shall make the determination of

qualifications of all applicants within a reasonable time after the filing of an application with the board. No establishment license shall be transferable, but an applicant may make application for more than one (1) establishment license so long as all of the requirements are met for each license.

(f) That the applicant for a crematory establishment license holds a current funeral establishment license in the state of Idaho.

(2) All applications for establishment licenses shall be in writing and shall contain the name of the applicant, the address and location of the establishment and a description of the type of structure and equipment to be used in the operation of the establishment, and such further information as may be required by the board to ensure the safe and sanitary operation of the establishment.

(3) The mortician responsible for the operation of an establishment shall maintain such records affecting the handling, custody, care, processing or transportation of human remains as may be required by the laws and rules of the state of Idaho and the board for all human remains received, prepared, cremated or otherwise disposed of by the establishment.

(4) In the event a licensed establishment ceases to have a resident full-time licensed mortician in its employ at its place of business, its license shall be canceled immediately by the board upon finding such fact; provided, however, in the event of the death of a licensed mortician who leaves an establishment as part of the assets of his estate, the legal representative of the estate of the deceased mortician shall be entitled to operate the establishment under the license, or renewals thereof, for a period not to exceed two (2) years from date of death of the mortician without meeting the qualifications of an applicant and without having a full-time licensed mortician in his employ; provided further, however, this provision shall not permit an unlicensed person to perform mortician services.

History.

1970, ch. 70, § 10, p. 167; am. 1974, ch. 13, § 98, p. 138; am. 2003, ch. 257, § 8, p. 664.

STATUTORY NOTES

Prior Laws.

Former § 54-1111 was repealed. See Prior Laws, § 54-1101.

54-1112. Requirements for resident trainee license. — The board shall issue to any person a resident trainee license to practice as a resident trainee and perform services at a particular establishment under the personal supervision of a specified licensed mortician within the state of Idaho who has complied with and fulfilled all of the following requirements:

(1) Has attained the age of eighteen (18) years, and is a resident of the state of Idaho.

(2) Is of good moral character.

(3) Has graduated from an accredited high school or has received an

equivalent education as determined by the standards set and established by the state board of education.

(4) Has filed an application with the board as required by this chapter and paid the required filing fee. Provided further, that the board shall make the determination of qualifications of all applicants within a reasonable time after the filing of an application with the board. Provided further, no person shall be eligible to be licensed as a resident trainee who has practiced as a resident trainee or apprentice for a total cumulative period of more than two (2) years in the state of Idaho unless approved by the board for good cause.

History.

1970, ch. 70, § 11, p. 167; am. 1974, ch. 13,

§ 99, p. 138; am. 2003, ch. 257, § 9, p. 664;

am. 2009, ch. 72, § 1, p. 207.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.

Prior Laws.

Former § 54-1112 was repealed. See Prior Laws, § 54-1101.

Amendments.

The 2009 amendment, by ch. 72, added “unless approved by the board for good cause” at the end of subsection (4).

54-1113. Application for license — Form and contents — Certified copies of documents showing qualifications. — All applications for all licenses to be issued under the provisions of this act shall be filed with the board, together with the required filing fee, upon such forms as prescribed by the board of morticians, and shall contain statements of facts relating to each of the qualifications prescribed in this act for which the license is sought as well as any other information specified by the board of morticians. The board may require, as part of the application, certified copies of documents showing compliance with the requirements for the license sought by the application, including but not limited to certified copies of diplomas or graduation certificates from high schools, colleges and embalming colleges, certified copies of birth certificates, and certified copies of articles of incorporation. The application shall also list and describe the location of court records of any felony of which the applicant has been convicted in a court of law. All applications shall be signed by the applicant who shall verify the contents thereof under oath. All applications shall remain with the board and be a permanent record in that office.

Applications for the renewal of licenses shall be in such abbreviated form as prescribed by the board and shall require any information specified by the board of morticians.

History.

1970, ch. 70, § 12, p. 167; am. 1974, ch. 13, § 100, p. 138.

STATUTORY NOTES

Prior Laws.
Former 54-1113 was repealed. See Prior Laws, § 54-1101.

Compiler's Notes.
The words "this act", in the first sentence,

refer to S.L. 1970, ch. 70, compiled as §§ 54-1101 to 54-1109, 54-1111 to 54-1113, 54-1115, 54-1116 to 54-1121, 54-1127, and 54-1128. The reference probably should be to "this chapter".

54-1114. Eligibility of embalmers for mortician's license — Eligibility of registered apprentices for resident trainee license. [Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised 1970, ch. 70,

§ 13, p. 167, was repealed by S.L. 2003, ch. 257, § 10.

54-1115. License fees. — There shall be paid with the filing of any application for an original license, or the applications for any renewal of a license, the following license fees:

- (1) Not more than one hundred dollars (\$100) for a mortician license.
- (2) Not more than one hundred dollars (\$100) for a funeral director license.
- (3) Not more than one hundred fifty dollars (\$150) for a funeral establishment license.
- (4) Not more than two hundred dollars (\$200) for a crematory license.
- (5) Not more than one hundred dollars (\$100) for a resident trainee license.
- (6) Not more than one hundred dollars (\$100) for a certificate of authority.
- (7) Not more than one hundred dollars (\$100) application fee for endorsement and/or examination.

All fees shall be paid to the bureau of occupational licenses.

History.
1970, ch. 70, § 14, p. 167; am. 1974, ch. 13, § 101, p. 138; am. 1992, ch. 135, § 1, p. 423;

am. 2001, ch. 136, § 2, p. 495; am. 2003, ch. 257, § 11, p. 664.

STATUTORY NOTES

Cross References.
Bureau of occupational licenses, § 67-2602.
Military exemption from fees, § 67-2602A.

Prior Laws.
Former § 54-1115 was repealed. See Prior Laws, § 54-1101.

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, §§ 6 to 8.

54-1115A. Annual renewal — Reinstatement. — All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License re-

newal and reinstatement shall be in accordance with section 67-2614, Idaho Code. In the event a licensee fails to renew a license as provided, the reinstatement fee shall be two hundred fifty dollars (\$250).

History.

I.C., § 54-1115A, as added by 2001, ch. 136,
§ 3, p. 495; am. 2003, ch. 21, § 8, p. 77.

54-1116. Denial, suspension, or revocation of licenses — Grounds — Probation. — The board may refuse to issue or may refuse to renew or may suspend or may revoke any license, or may place the holder thereof on a term of probation, after proper hearing, upon finding that the holder of such license committed any of the following acts or omissions:

- (1) Conviction of a crime involving moral turpitude.
- (2) Conviction of a felony.
- (3) Unprofessional conduct, which is hereby defined to include:
 - (a) Misrepresentation or fraud in the conduct of mortician or funeral director services;
 - (b) False or misleading advertising as the holder of a license for the practice of mortician or funeral director services; advertising or using the name of a person who is not an employee of the establishment in connection with that of any establishment;
 - (c) Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs before death or after death; provided, that this shall not be deemed to prohibit general advertising;
 - (d) Employment by the licensee of persons known as “cappers,” or “steerers,” or “solicitors,” or other such persons to solicit or obtain agreements with the public for the performance of mortician services;
 - (e) Employment directly or indirectly, of any resident trainee, agent, assistant, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular mortician, funeral director or establishment;
 - (f) The direct or indirect payment, or offer of payment, of a commission by the licensee, his agents, assistants, or employees for the purpose of securing business;
 - (g) Gross immorality;
 - (h) Aiding or abetting an unlicensed person to practice mortician or funeral director services;
 - (i) Using profane, indecent or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;
 - (j) Violation of any of the provisions of this chapter;
 - (k) Violation of any state law, or municipal or county ordinance, or rule authorized under this chapter affecting the handling, custody, care, processing or transportation of dead human bodies;
 - (l) Fraud or misrepresentation in obtaining or renewing a license;
 - (m) Refusing to promptly surrender the custody of a dead human body

upon the express order of the person lawfully entitled to the custody thereof;

(n) Solicitation or acceptance, directly or indirectly, of a request, before need, for an agreement to provide mortician services or funeral supplies at a price less than that offered by such person to others at time of need;

(o) Violation of any statutes of any state having to do with prearrangement or prefinancing of mortician services or funeral supplies.

History.

§ 102, p. 138; am. 1994, ch. 95, § 1, p. 218;
1970, ch. 70, § 15, p. 167; am. 1974, ch. 13, am. 2003, ch. 257, § 12, p. 664.

STATUTORY NOTES

Prior Laws.

Former § 54-1116 was repealed. See Prior Laws, § 54-1101.

JUDICIAL DECISIONS

Cited in: H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors, 113 Idaho 646, 747 P.2d 55 (1987).

RESEARCH REFERENCES

Am. Jur. — 38 Am. Jur. 2d, Funeral Directors and Embalmers, §§ 13 to 15.

54-1117. Written complaint — Procedure for suspension or revocation of license. — Upon a written complaint filed with the board of morticians the board shall cause to be held a hearing to determine whether a license of any person issued under this chapter should be suspended or revoked, or the issuance or renewal thereof refused, because of a violation of any of the causes set forth in the preceding section 54-1116, Idaho Code. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any person aggrieved by the action of the board shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

§ 103, p. 138; am. 1993, ch. 216, § 61, p. 587;
1970, ch. 70, § 16, p. 167; am. 1974, ch. 13, am. 2003, ch. 257, § 13, p. 664.

STATUTORY NOTES

Prior Laws.

Former § 54-1117 was repealed. See Prior Laws, § 54-1101.

54-1118. Sending body to an establishment without inquiry prohibited — Exceptions — Anatomical gifts — Authority regarding disposition. — (1) It shall be unlawful for any public officer or employee, an official of any public institution, any physician or surgeon, or any other person who had a professional relationship with any decedent to send or

cause to be sent to any establishment or mortician the remains of any deceased person without having first made due inquiry as to the desires of the decedent as expressed in any prearranged funeral plan as set forth in section 54-1139, Idaho Code, or of the person authorized to direct disposition of the remains under section 54-1142, Idaho Code.

No person licensed under this chapter or anyone acting on behalf of a licensee shall participate in any transaction or business which in any way interferes with the freedom of choice of the general public to choose a mortician or an establishment to perform the burial or disposal of a human body, except where the body or a part thereof is given for anatomical purposes.

Nothing herein contained shall be construed to govern or limit the authority of any administrator or executor, trustee, or other person having a fiduciary relationship with the deceased.

(2) No company, corporation or association engaged in the business of paying, or providing for the payment, of the expenses for mortician services or funeral supplies, or engaged in the business of providing insurance upon the life of any person for the payment of such expenses upon his death, shall pay any such insurance or benefits to any mortician, funeral director, establishment, or other person in any manner which might or could deprive the decedent as expressed in any prearranged funeral plan as set forth in section 54-1139, Idaho Code, or of the person authorized to direct disposition of the remains under section 54-1142, Idaho Code, from directing the method, manner and arrangements for the disposition of the remains.

History.

1970, ch. 70, § 17, p. 167; am. 1994, ch. 423, § 6, p. 1329; am. 2003, ch. 257, § 14, p. 664.

STATUTORY NOTES

Prior Laws.

Former § 54-1118 was repealed. See Prior Laws, § 54-1101.

54-1119. Authority of department of health and welfare to control handling of dead bodies — Rules and regulations. — The department of health and welfare shall have the jurisdiction to regulate, control and supervise the preservation, embalming, handling, transportation and burial or disposal of all dead human bodies and all methods preparatory thereto; and that said department is hereby authorized to make and enforce such rules and regulations relating thereto as in its opinion are necessary to preserve and protect the public health.

History.

1970, ch. 70, § 18, p. 167; am. 1974, ch. 13, § 104, p. 138.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Prior Laws.

Former § 54-1119 was repealed. See Prior Laws, § 54-1101.

54-1120. Receiving body for transportation outside state without permit prohibited — Cremation and removal of human remains. — It shall be unlawful for any public transportation agent of any public transportation facility to receive a dead human body for shipment or transportation by any means of transportation or conveyance to or from any point in this state, or to a point outside this state, unless said embalmed human body is accompanied by a permit for final disposition signed by the individual authorized by law to certify the cause of death. Human remains shall not be delivered to a crematory or removed from the casket or other container without the written consent of the person giving the consent to the cremation of the body.

History.

1970, ch. 70, § 19, p. 167; am. 1972, ch. 112, § 1, p. 227; am. 2003, ch. 257, § 15, p. 664.

STATUTORY NOTES

Prior Laws.

Former § 54-1120 was repealed. See Prior Laws, § 54-1101.

54-1121. Accounting procedure — Income and expenses. — All income and expenses received or incurred under the provisions of this act shall be itemized, validated, and audited and allowed by the chief of the bureau of occupational licenses.

History.

1970, ch. 70, § 20, p. 167; am. 1974, ch. 13, § 105, p. 138.

STATUTORY NOTES

Cross References.

Chief of bureau of occupational licenses, § 67-2603.

Prior Laws.

Former § 54-1121 was repealed. See Prior Laws, § 54-1101.

Compiler's Notes.

The words "this act" refer to S.L. 1970, ch. 70, compiled as §§ 54-1101 to 54-1109, 54-1111 to 54-1113, 54-1115, 54-1116 to 54-1121, 54-1127, and 54-1128. The reference probably should be to "this chapter".

54-1122 — 54-1125. Advanced funeral agreements — Terms and conditions — Definitions — Trust obligations — Records and reports. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1970, ch.

70, §§ 21-24, p. 167; am. 1974, ch. 13, § 106, p. 138; am. 1978, ch. 15, § 1, p. 29; am. 1985,

ch. 73, § 1, p. 148, were repealed by S.L. 1989, ch. 138, § 1. For current comparable provisions, see §§ 54-1129 to 54-1138.

54-1126. Judicial review of board's decisions. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 54-1126, which comprised 1970, ch. 70, § 25, p. 167; am. 1974, ch. 13, § 107, p.

138, was repealed by S.L. 1993, ch. 216, § 62, effective July 1, 1993. For current comparable provisions, see § 54-1117.

54-1127. Injunction against violations of act — Venue. — The attorney general of the state of Idaho, the board, or any resident citizen may maintain an action in equity in their name or in the name of the state of Idaho to perpetually enjoin any person from persisting in the doing of any acts constituting a violation of this act or in failing to do any acts required by this act. Such action shall be brought in the district court of the county in which such acts or omissions, or some of them, are claimed to have been or are being committed, by filing a verified complaint. The court, or a judge thereof at chambers if satisfied from such complaint or by affidavits that the acts complained of have been or are being committed and will probably be persisted in, may issue a temporary writ, without notice or bond, enjoining the defendant from the commission of any such act or acts pending further hearing of the cause. The cause shall then proceed as in other cases for injunction.

History.

1970, ch. 70, § 26, p. 167.

STATUTORY NOTES

Compiler's Notes.

The words "this act", in the first sentence, refer to S.L. 1970, ch. 70, compiled as §§ 54-1101 to 54-1109, 54-1111 to 54-1113, 54-1115,

54-1116 to 54-1121, 54-1127, and 54-1128. The reference probably should be to "this chapter".

54-1128. Violations constituting misdemeanors — Exceptions — Enforcement. — Any person who knowingly violates any provision of this chapter, or any licensee under this chapter who shall commit an act of unprofessional conduct as defined and designated under the provisions of subsection (3) of section 54-1116, Idaho Code, except subsections (g) and (i) thereof, shall be guilty of a misdemeanor unless such conduct is punishable as a felony elsewhere under the law. It shall be the duty of the board of morticians to see that the provisions of this chapter are properly administered and enforced throughout the state, and all peace officers and prosecuting attorneys shall aid in their several capacities in discharge of these duties.

History.

1970, ch. 70, § 27, p. 167; am. 1974, ch. 13, § 108, p. 138; am. 2003, ch. 257, § 16, p. 664.

STATUTORY NOTES

Cross References.

Punishment for misdemeanor not otherwise provided, § 18-113.

Compiler's Notes.

Section 31 of S.L. 1970, ch. 70, read: "If any provision or provisions of this act shall be held to be unconstitutional or invalid or unenforceable, such unconstitutional, invalid or unenforceable provision or provisions shall be severable from the remainder of the act although contained in sections containing other provisions

and shall be excluded from this act, and the fact that said provision or provisions shall be held unconstitutional, invalid or unenforceable shall in no wise affect any other provisions of this act although contained in the same section."

Effective Dates.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

54-1129. Declaration of intent. — It is the purpose of sections 54-1129 through 54-1138, Idaho Code, to provide for the certification of persons selling or offering for sale prearrangement sales contracts, to provide for the creation and administration of prearrangement sales contract trust funds to assure funds for the performance to purchasers who contract through prearrangement sales contracts for the purchase of funeral and cemetery merchandise and funeral and cemetery services, and to provide for the disbursement and allocation of trust funds upon the certified person's performance of his contractual obligations. The sections of Idaho Code specified herein shall not affect the provisions of sections 54-1101 through 54-1121 and sections 54-1126 through 54-1128, Idaho Code.

History.

I.C., § 54-1129, as added by 1989, ch. 138, § 2, p. 311.

STATUTORY NOTES

Compiler's Notes.

Section 54-1126, referred to near the end of

this section, was repealed by S.L. 1993, ch. 216, § 62.

RESEARCH REFERENCES

A.L.R. — What are necessary funeral expenses within coverage of medical payments and funeral expense provision of insurance policy. 87 A.L.R.3d 497.

Construction and effect of contracts or insurance policies providing pre-need coverage of burial expense or service. 67 A.L.R.4th 36.

54-1130. Scope and exceptions. — A. Sections 54-1129 through 54-1138, Idaho Code, apply to all persons who sell or offer for sale prepaid funeral or cemetery merchandise or services.

B. Sections 54-1133, 54-1134 and 54-1135, Idaho Code, do not apply to:

- (1) Agreements to sell or sales made for rights of interment or entombment in a cemetery section, lawn crypt section, mausoleum or columbarium which are in existence at the time of initial payment on the contract, or
- (2) Agreements to sell or sales made for monuments and grave markers that will be delivered and installed upon performance of payment.

History.

I.C., § 54-1130, as added by 1989, ch. 138,
§ 2, p. 311.

54-1131. Definitions. — As used in sections 54-1132 through 54-1143, Idaho Code:

(1) "Beneficiary" means the person who is to receive the funeral or cemetery merchandise or funeral or cemetery services.

(2) "Certified person or seller" means any person holding a certificate of registration or who is registered to sell or offer for sale prearrangement sales contracts.

(3) "Funeral or cemetery merchandise" means personal property normally and customarily sold by funeral establishments, cemeteries, and crematory establishments including, but not limited to, caskets or other primary containers, burial vaults, casket-vaults, grave liners, funeral clothing or accessories, monuments, grave markers and cremation urns. It shall include:

(a) Merchandise identified for the purchaser or the beneficiary to be manufactured for future delivery and use.

(b) Merchandise that has been manufactured and held by the manufacturer for future delivery and use.

(c) Merchandise that has been manufactured and delivered to and in the possession of the seller, who has placed it, until needed, in storage.

(4) "Funeral or cemetery services" means those services normally and customarily performed by a funeral service practitioner, mortician, funeral establishment, cemetery or crematory establishment in conjunction with funeral or memorial services, interment, entombment or cremation.

(5) "Guaranteed contract" means a written prearrangement sales contract that guarantees the beneficiary funeral or cemetery services or funeral or cemetery merchandise contained in the contract and under which no charges other than the sales price contained in the contract shall be required upon delivery of the merchandise or performance of the funeral and cemetery services.

(6) "Nonguaranteed contract" means a written prearrangement sales contract that does not guarantee the beneficiary any specific funeral or cemetery merchandise or services. Any funds paid under this contract are only a deposit to be applied toward the final cost of the funeral or cemetery merchandise or services.

(7) "Prepaid prearrangement sale or prearrangement sales contract" means any sale, other than a contract of life insurance entered into by an insurance company, that has as its purpose the furnishing of funeral or cemetery merchandise or funeral or cemetery services in connection with the final disposition or commemoration of the memory of a dead human body, for use at a time determinable by the death of the person or persons whose body or bodies are to be disposed and where the sale terms require payment or payments to be made at a currently determinable time.

(8) "Primary container" means a casket, rental casket, casket-vault, chapel-vault or other container that serves as the repository for dead human remains.

(9) "Public cemetery" means a cemetery owned and operated by a cemetery district organized under Idaho law, or by a municipal corporation or political subdivision of the state of Idaho.

(10) "Purchaser" means a beneficiary or a person acting on behalf of a beneficiary who enters into a prearrangement sales contract with a certified person under which any payment or payments made under the contract are required to be deposited in trust.

(11) "Secondary container" means a vault, grave liner, urn or other container purchased by the buyer for a burial or required by the cemetery that will be the repository for the primary container.

(12) "Trustee" means any bank, trust company or savings institution authorized to do business in the state of Idaho where accounts are insured with the federal deposit insurance corporation, the federal savings and loan insurance corporation or other similar agency of the United States government.

History.

§ 2, p. 311; am. 1994, ch. 105, § 6, p. 234; am. I.C., § 54-1131, as added by 1989, ch. 138, 2003, ch. 257, § 17, p. 664.

STATUTORY NOTES

Cross References.

Cemetery maintenance districts, § 27-101 et seq.

54-1132. Certificate of authority — Requirements — Display of certificate. — (1) No individual may sell a prepaid contract or provide funeral or cemetery merchandise or funeral or cemetery services pursuant to a prepaid contract without first obtaining a valid certificate of authority.

A certificate of authority for public cemeteries shall be issued by the governing board, city council or board of county commissioners having overall supervision and control of the cemetery. A certificate of authority for privately owned cemeteries shall be issued by the Idaho board of cemetery directors. A certificate of authority for persons licensed under chapter 11, title 54, Idaho Code, shall be issued by the state board of morticians.

(2) Any individual seeking to obtain a certificate of authority must submit a statement that includes the following:

- (a) The types of prepaid contracts to be written;
- (b) The name and address of the place of business of the individual; and
- (c) Any information deemed necessary by the certifying authority to show evidence of good moral character, a reputation for fair dealing in business matters, and the absence of a criminal record.

(3) Upon issuance, the certificate of authority shall be posted conspicuously in the holder's place of business.

(4) Any individual holding a certificate shall present a copy of the certificate to the purchaser before engaging in the activity of selling a prearrangement sales contract.

History.

I.C., § 54-1132, as added by 1989, ch. 138,
§ 2, p. 311; am. 2003, ch. 257, § 18, p. 664.

STATUTORY NOTES**Cross References.**

State board of crematoriums, § 54-3801 et
seq.

State board of morticians, § 54-1105.

54-1133. Form and content of contract — Price disclosure. —

A. Each contract shall be written in clear understandable language and shall be printed or typed in easy-to-read type, size, and style.

B. Each contract shall identify the seller, seller's certificate of authority number, purchaser, and the beneficiary if other than the purchaser.

C. Each contract shall specify the services and/or merchandise to be provided, as well as a statement of the law regarding substitution as provided in section 54-1137, Idaho Code.

D. Each contract shall set forth the purchase price and the terms under which it is to be paid.

E. Each contract shall conform to other state or federal regulations, including price disclosure. It is the contract seller's duty to comply with such regulations.

F. Each contract shall state clearly whether it is a guaranteed price contract or a nonguaranteed price contract.

G. Each contract shall state clearly whether it is a revocable or nonrevocable trust.

H. Each contract shall state the amount of money to be placed in trust and the name of the trustee, but the contract may provide that the seller may designate a new trustee to obtain higher interest earnings on the trust funds.

I. Each contract shall explain the disposition of the interest and include a statement of the fees, expenses and taxes which may be deducted from the interest pursuant to section 54-1134, Idaho Code, and a statement of the purchaser's responsibility for taxes owed on the interest.

J. Each contract shall explain the purchaser's cancellation rights pursuant to section 54-1135, Idaho Code.

History.

I.C., § 54-1133, as added by 1989, ch. 138,
§ 2, p. 311.

54-1134. Prearrangement trust fund deposits. — A. Within ten (10) business days of receipt, funds received by the seller in payments of the prepaid contract shall be deposited in trust as follows:

(1) Fifty per cent (50%) of the amount received in payment for a marker, monument or secondary container shall be deposited with the trustee to be held in trust; provided however, the first fifty per cent (50%) of the fifty per cent (50%), or twenty-five per cent (25%) of the total, may be collected, accounted for and applied to the seller's cost of purchase with the remainder to be deposited in trust. No amount need be held in trust for

those items which are fully purchased by the seller and stored for the purchaser at seller's expense in a bonded warehouse.

(2) Upon the sale of all other funeral or cemetery merchandise or services there shall be deposited in trust the amount of eighty-five per cent (85%) of the amounts received.

B. Funds deposited in trust shall be identified in the records of the trustee by the name of the purchaser and beneficiary and adequate records shall be maintained to allocate all earnings to each prearrangement sales contract. Nothing shall prevent the trustee from commingling the deposits in any such trust fund account for purposes of managing and investing the funds. A common trust fund account shall be identified by the name of the trustee.

C. The certificating authority shall as often as it deems reasonably necessary, examine the trust account, records, documents and contracts of the seller. The certificating authority shall determine the reasonable cost of such examination, which shall be paid to the certificating authority by the seller. Each seller is hereby required to file not less than annually with the certificating authority a certified audit report revealing the number of such contracts or agreements executed by him during the preceeding [preceding] year, the total value of said contracts or agreements, the amount of money collected and paid in trust pursuant to said contracts or agreements and the name of the trustee.

D. The interest income from the trust on all contracts may be used to pay reasonable trustee fees and administrative expenses incurred in the administration of the trust and taxes. The certificating authority shall, by rule, establish a limit on the amount of fees and expenses which may be deducted from the interest income and the trustee shall not exceed said limit.

E. At the time of providing the services and/or merchandise, any interest income remaining after payment of trustee fees, administrative expenses and taxes shall be disbursed as follows:

(1) On a guaranteed price prepaid contract, to the seller.

(2) On a nonguaranteed price prepaid contract, to the purchaser or the purchaser's estate.

F. Any person engaging in prearrangement sales who enters into a combination sale which involves the sale of items subject to trust and any item not subject to trust shall be prohibited from increasing the sales price of those items not subject to trust with the purpose of allocating a lesser sales price to items which require a trust deposit.

History.

I.C., § 54-1134, as added by 1989, ch. 138,
§ 2, p. 311.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection C

was added by the compiler to correct a misspelling in the enacted section.

54-1135. Cancellation of contract — Refund of trust deposits. —

A. At any time prior to the death of the beneficiary under a revocable

prearrangement sales contract trust, the purchaser may cancel the contract and be entitled to a refund of all payments made, plus accrued interest thereon, less reasonable administrative expenses and taxes incurred in the operation of the trust.

B. Prearrangement sales contracts which are irrevocable pursuant to the terms of such contract shall not be cancellable by the purchaser or by the beneficiary.

History.

I.C., § 54-1135, as added by 1989, ch. 138,
§ 2, p. 311.

54-1136. Solicitation — Limitations. — (1) The right of a seller to lawfully advertise shall not be restrained, nor shall general advertising be prohibited.

(2) Advertising and marketing of prearrangement sales contracts is permitted provided that:

(a) The seller clearly identifies himself and his product.

(b) The seller shows his certificate of authority as provided in section 54-1132, Idaho Code. If the marketing is by telephone, the seller must disclose his certificate of authority.

(c) The seller makes an appointment with the prospective buyer if the meeting is at a place other than the seller's place of business.

(3) Advertising and marketing of prearrangement sales contracts is permitted provided that any contract seller shall not:

(a) Directly or indirectly call upon or employ any agent, assistant, employee, independent contracting person or any other person to call upon individuals or persons in hospitals, rest homes, or similar institutions for the purpose of soliciting prepaid contracts for making funeral or cemetery or final disposition arrangements without first having been specifically requested to do so by such person or by his next of kin.

(b) Solicit for dead human bodies for the purpose of providing funeral or cemetery services, final disposition, or cemetery or funeral merchandise when such solicitation occurs where death is reasonably pending or after death.

(c) Solicit or accept or pay any consideration for recommending specified persons to cause a dead human body to be provided funeral or cemetery services or funeral or cemetery merchandise, or the services of a crematory, mausoleum or cemetery except where such arrangement is subject to a prepaid contract.

(d) Be involved in solicitation which comprises an uninvited invasion of personal privacy at the personal residence of a person unless the solicitation has been previously and expressly requested by the person solicited.

History.

I.C., § 54-1136, as added by 1989, ch. 138,
§ 2, p. 311; am. 2003, ch. 257, § 19, p. 664.

54-1137. Substitutions — Merchandise, services or provider. —

A. If the particular merchandise or service specified in the contract is unavailable at the time of delivery, the seller shall furnish merchandise and services similar in style and at least equal in quality of material and workmanship.

B. The evaluation of quality shall be based on objective criteria.

C. The person making arrangements for the funeral of the contract beneficiary shall choose the goods and/or services to be substituted and this choice must be reasonable based on the standards in subsections A and B of this section.

D. If the seller is unable to provide merchandise and services or acceptable substitute merchandise or services under the terms of the contract, then the person responsible for arrangements for the funeral of the contract beneficiary may choose another provider and the funds in the trust shall be used to pay for the merchandise and services of the substitute provider.

History.

I.C., § 54-1137, as added by 1989, ch. 138,
§ 2, p. 311.

54-1138. Enforcement penalty — Disclosure of contracts upon sale of business. — (1) Sections 54-1129 through 54-1143, Idaho Code, shall be enforced by the Idaho state board of morticians or by the Idaho state board of cemeterians, depending upon whether the seller is a mortician/funeral director or cemeterian, who shall have authority to promulgate rules to enforce the provisions.

(2) Any person violating the provisions of sections 54-1129 through 54-1143, Idaho Code, shall be guilty of a misdemeanor unless such act is punishable as a felony elsewhere under law.

(3) No funeral service or funeral merchandise provider, be it funeral home or cemetery or third party seller, shall go out of business or sell a substantial part or all of its assets to any other person or firm without first disclosing the full particulars of all prearrangement sales contracts entered into by such seller, including the date of such contract, the purchaser thereof, the beneficiary, the amount of the trust, the name and location of trustee, and the merchandise or services to be provided under the terms of the contract.

History.

I.C., § 54-1138, as added by 1989, ch. 138,
§ 2, p. 311; am. 2003, ch. 257, § 20, p. 664.

STATUTORY NOTES**Cross References.**

Punishment for misdemeanors where none prescribed, § 18-113.

State board of crematoriums, § 54-3801 et seq.

State board of morticians, § 54-1105.

"The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Compiler's Notes.

Section 4 of S.L. 1989, ch. 138 provided:

54-1139. Instructions for disposition of person's remains. — (1) A person may provide written instructions as part of a prearranged funeral plan for disposition of the person's remains by any lawful means. The person shall execute the prearranged funeral plan, containing the instructions, as provided in section 54-1133, Idaho Code.

(2) As used in this section, "prearranged funeral plan" means a plan:

(a) For the final disposition of a person's remains; and

(b) That has been funded in advance of the death of the person leaving instructions for the disposition of that person's remains.

(3) A person, as part of a prearranged funeral plan, shall have the authority to sign all necessary or required forms, authorizations or agreements pertaining to the disposition of his remains including, but not limited to, a cremation authorization form.

(4) A person, as part of a prearranged funeral plan, may designate a person to make decisions regarding any substitutions under section 54-1137, Idaho Code.

(5) To the extent any provisions relating to the disposition of a person's remains are not clearly covered in a prearranged funeral plan, then the provisions of section 54-1142, Idaho Code, shall apply. The mere ownership of a burial plot, with or without a headstone or marker, does not constitute a prearranged funeral plan.

History.

I.C., § 54-1139, as added by 1994, ch. 423,
§ 1, p. 1329; am. 2009, ch. 51, § 1, p. 132.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 51, added

subsection (5) and made changes in the designation scheme in the section.

54-1140. Person's directions to be followed — Exception. — Unless a compelling public interest makes it impossible to comply with a person's direction as provided in section 54-1139, Idaho Code, the remains of a person must be disposed of as instructed in such instrument.

History.

I.C., § 54-1140, as added by 1994, ch. 423,
§ 2, p. 1329.

54-1141. Survivor's services. — The provisions of sections 54-1140 and 54-1142, Idaho Code, shall not prevent the deceased person's survivors from, at their own expense, pursuing alternate meaningful services and making arrangements for funeral services that do not conflict with the deceased's instructions for disposition.

History.

I.C., § 54-1141, as added by 1994, ch. 423,

§ 3, p. 1329; am. 2003, ch. 257, § 21, p. 664;
am. 2009, ch. 51, § 2, p. 132.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 51, inserted
“and 54-1142” and “alternate.”

54-1142. Authority in absence of or uncovered provisions in a prearranged funeral plan. — (1) If the decedent has not made a prearranged funeral plan as set forth in section 54-1139, Idaho Code, or to the extent any provisions relating to the disposition of the person's remains are not clearly covered in a prearranged funeral plan, the right to control the disposition of the remains of a deceased person or to determine provisions not clearly covered in a prearranged funeral plan vests in, and devolves upon the following in the order named:

- (a) The person designated in a written document executed by the decedent and acknowledged in the same manner as required for instruments conveying real property, and subject to such limitations, restrictions, or directions, as may be set forth in such document or, the person designated by the decedent as authorized to direct disposition as listed on the decedent's United States department of defense record of emergency data, DD form 93, or its successor form, if the decedent died while serving in military service as described in 10 U.S.C. 1481(a)(1) through (8) in any branch of the United States armed forces, United States reserve forces or national guard;
- (b) The person designated as agent under a durable power of attorney for health care executed by the decedent, unless such durable power of attorney for health care contains express and clear language denying such right;
- (c) The person designated in a durable power of attorney executed by the decedent, if such power of attorney contains express and clear language granting such right to the agent named in such power of attorney;
- (d) The competent surviving spouse of the decedent;
- (e) A majority of the competent surviving adult children of the decedent, provided that less than one-half (1/2) of the competent surviving adult children shall be vested with the right to control the disposition of the remains of the decedent if they have used reasonable efforts to notify all other competent surviving adult children of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all competent surviving adult children;
- (f) The competent surviving parents or parent of the decedent, provided that if one (1) of the competent surviving parents is absent, the remaining competent surviving parent shall be vested with the right to control the disposition of the remains of the decedent after reasonable efforts have been made and are unsuccessful in locating the absent competent surviving parent;
- (g) The person appointed by a court of competent jurisdiction as the personal representative or administrator of the estate of the decedent;
- (h) The person nominated as the personal representative of the estate of the decedent in the will of the decedent;

(i) The competent adult person or persons entitled to inherit from the decedent under the intestate succession laws of the state of Idaho, respectively in the next degree of kinship, provided that if there is more than one (1) competent surviving adult person of the same degree of kinship, the majority of those persons, and provided further that less than the majority of competent surviving adult persons of the same degree of kinship shall be vested with the right to control the disposition of the remains of the decedent if those persons have used reasonable efforts to notify all other competent surviving adult persons of the same degree of kinship of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of one-half (1/2) or more of all competent surviving adult persons of the same degree of kinship;

(j) If the persons listed above fail to exercise their right to dispose of the remains of the deceased person within forty (40) days of the death of the deceased person, the person acting as guardian of the ward at the time of the ward's death, or if no guardian was then acting, the person acting as conservator of the protected person at the time of the protected person's death, has the authority to dispose of the deceased person's remains, including cremation of the remains.

(2) If any person to whom the right of control has vested pursuant to the foregoing has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death, and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next qualifying person as listed above as if the charged person did not exist; provided however, that if the charges against such person are dropped, or if such person is acquitted of the charges, the right of control is returned to the person.

(3) For purposes of this section:

(a) "Adult" means an individual who is eighteen (18) years of age or older;

(b) "Child" means a natural or adopted child of the decedent;

(c) "Competent" means the individual has not been declared incompetent by a court of law, or who has been declared competent by a court of law after a prior declaration of incompetence;

(d) "Durable power of attorney" means a power of attorney described in section 15-12-102, Idaho Code, or any similar document properly executed under the laws of another jurisdiction; and

(e) "Durable power of attorney for health care" means the document described in chapter 45, title 39, Idaho Code, or any similar document properly executed under the laws of another jurisdiction;

(f) "Will" means any testamentary device which is valid under the Idaho probate code, including, but not limited to, sections 15-2-503, 15-2-504 and 15-2-506, Idaho Code, whether or not originally executed in, or under the laws of, the state of Idaho.

(4)(a) A cemetery authority or licensed funeral director or a licensed hospital or its authorized personnel may permit or assist in, and a physician may perform, an autopsy of any remains of a decedent in its custody:

- (i) If the decedent, prior to his death, authorizes an autopsy in his will or in another written instrument, including, but not limited to, a durable power of attorney for health care; or
 - (ii) Upon the receipt of a written authorization signed by, telegraphed from, or received by facsimile transmission from, a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer; or
 - (iii) Upon the receipt of an oral authorization obtained by telephone, and recorded on tape or other recording device, from a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer.
- (b) A cemetery authority or a licensed funeral director of a licensed hospital or its authorized personnel is not liable for permitting or assisting, and a physician is not liable for performing, an autopsy pursuant to the authorization provided in paragraph (a) of this subsection unless he has actual notice that such representation is untrue at the time the autopsy is performed. If such authorization is contained in a will, the autopsy may be performed regardless of the validity of the will in other respects and regardless of whether the will may not be offered for, or admitted to, probate until a later date.
- (c) This subsection shall not authorize the obtaining of an oral authorization by telephone, recorded on tape or other recording device, for the autopsy of a deceased person if it is made known to the physician who is to perform the autopsy that the deceased person was, at the time of his death, a member of a religion or group which opposes autopsies.

History.

I.C., § 54-1142, as added by 1994, ch. 423, § 4, p. 1329; am. 2001, ch. 263, § 1, p. 964; am. 2005, ch. 120, § 6, p. 380; am. 2006, ch.

181, § 1, p. 560; am. 2008, ch. 186, § 3, p. 585; am. 2009, ch. 51, § 3, p. 132; am. 2010, ch. 43, § 1, p. 76.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 181, added subsection (1)(j).

The 2008 amendment, by ch. 186, updated the section reference in paragraph (3)(d) in light of 2008 legislation.

The 2009 amendment, by ch. 51, in the section catchline, inserted "or uncovered provisions in a"; and in the introductory para-

graph in subsection (1), inserted "or to the extent any provisions relating to the disposition of the person's remains are not clearly covered in a prearranged funeral plan" and "or to determine provisions not clearly covered in a prearranged funeral plan."

The 2010 amendment, by ch. 43, added the language following "in such document" in paragraph (1)(a).

54-1143. Right to rely. — (1) Any person signing a funeral service agreement or cremation authorization form or any other authorization for disposition, whether part of a prearranged funeral plan or at time of death, shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the deceased whose remains are sought to be buried or cremated and the signer's authority to order such disposition.

(2) A funeral establishment, cemetery or crematory establishment shall

have the right to rely on such authorization and shall have authority to dispose of human remains upon the receipt of an authorization form signed by the decedent or by the person having the right to control disposition as set forth in section 54-1142, Idaho Code, or upon authorization by the county coroner pursuant to section 31-2802, Idaho Code. There shall be no liability of a funeral establishment, cemetery or crematory establishment that disposes of human remains pursuant to such authorization, or that releases or disposes of the remains pursuant to such authorization.

History.

§ 5, p. 1329; am. 2003, ch. 257, § 22, p. 664;
I.C., § 54-1143, as added by 1994, ch. 423, am. 2012, ch. 208, § 3, p. 562.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 208, inserted pursuant to section 31-2802, Idaho Code” at the end of the first sentence in subsection (2).
“or upon authorization by the county coroner

54-1144. Unclaimed remains of veterans. — (1) The division of veterans services may assume control over the cremated remains of a deceased person if:

- (a) The decedent's remains have not been disposed of pursuant to a prearranged funeral plan as set forth in section 54-1139, Idaho Code;
- (b) The persons vested with the right to control the disposition of the remains of a deceased person pursuant to section 54-1142, Idaho Code, have not made final arrangements for the disposition of the remains within one (1) year following the deceased person's death or have not exercised control over those remains for a period of one (1) year; and
- (c) The division of veterans services certifies that the deceased person is eligible for interment at the state veterans cemetery as an armed forces member pursuant to the rules of the state veterans cemetery.

(2) An Idaho chapter of a nationally chartered veterans services organization may assume control over the cremated remains of a deceased person if:

- (a) The decedent's remains have not been disposed of pursuant to a prearranged funeral plan as set forth in section 54-1139, Idaho Code;
- (b) The persons vested with the right to control the disposition of the remains of a deceased person pursuant to section 54-1142, Idaho Code, have not made final arrangements for the disposition of the remains within one (1) year following the deceased person's death or have not exercised control over those remains for a period of one (1) year; and
- (c) The Idaho chapter of a nationally chartered veterans services organization certifies that:

- (i) The deceased person is an armed forces member as defined in the rules of the state veterans cemetery;

- (ii) The Idaho chapter of a nationally chartered veterans services organization shall be solely responsible for the costs of interment, including the application for and receipt of any available governmental benefits.

(3) There shall be no liability of a funeral establishment, mortuary,

cemetery, crematory, or a related entity, a licensed mortician, or licensed funeral director, or any employee or agent thereof who transfers the cremated remains of a deceased person to the division of veterans services or an Idaho chapter of a nationally chartered veterans services organization pursuant to the provisions of this section.

(4) There shall be no liability of the state of Idaho or any employee or agent thereof related to the transfer of the cremated remains of a deceased person to an Idaho chapter of a nationally chartered veterans services organization or the interment of such remains pursuant to the provisions of this section.

History.

I.C., § 54-1144, as added by 2003, ch. 53,
§ 1, p. 194.

STATUTORY NOTES

Cross References.

Idaho state veterans cemetery, § 65-108.

Division of veterans' services, § 65-201.

CHAPTER 12

ENGINEERS AND SURVEYORS

SECTION.

- 54-1201. Declaration of policy.
- 54-1202. Definitions.
- 54-1203. Idaho board of licensure of professional engineers and professional land surveyors.
- 54-1204. Qualification of members of board.
- 54-1205. Compensation and expenses of board members.
- 54-1206. Removal of board members and filling vacancies.
- 54-1207. Board — Organization and meetings.
- 54-1208. Board — Powers.
- 54-1209. Receipts and disbursements.
- 54-1210. Records and reports.
- 54-1211. Roster.
- 54-1212. General requirements for examination and license.
- 54-1213. Applications and fees.
- 54-1214. Examinations.
- 54-1215. License — Seals — Intern certificates.
- 54-1216. Expirations and renewals — Fees.
- 54-1217. Practitioners at time act becomes effective. [Repealed.]
- 54-1218. Public work.
- 54-1219. Comity licensure — Fee.
- 54-1220. Disciplinary action — Procedures.

SECTION.

- 54-1221. Reissuance of licenses and certificates.
- 54-1222. Violations and penalties — Prosecution of offenses.
- 54-1223. Saving clause — Exemptions.
- 54-1224. [Repealed.]
- 54-1225. Appeals.
- 54-1226. Separability.
- 54-1227. Surveys — Authority and duties of professional land surveyors and professional engineers.
- 54-1228. Administering and certification of oaths — Authority of professional land surveyors.
- 54-1229. Legal survey of land.
- 54-1230. Public surveying — Right of entry.
- 54-1231. Public surveying — Assessment of damages for entry.
- 54-1232. Public surveying — Tender of damages for entry.
- 54-1233. Public surveying — Costs of assessment of damages.
- 54-1234. Monumentation — Penalty and liability for defacing.
- 54-1235. Practice by a business entity.
- 54-1236. Exclusive jurisdiction of the state — Restriction on requirement for additional licenses or fees.

54-1201. Declaration of policy. — To safeguard life, health and property, every person practicing or offering to practice professional engineering or professional land surveying, as herein defined, for any project

physically located in this state, shall submit evidence of his qualifications and be licensed as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice professional engineering or professional land surveying for any project physically located in this state, or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a licensed professional engineer or professional land surveyor, unless such person has been duly licensed or is exempted under the provisions of this chapter. Except as exempted by section 54-1223, Idaho Code, an engineer shall be allowed to practice professional engineering as defined in this chapter only when he has become duly licensed as a professional engineer by the board under this chapter. Except as exempted by section 54-1223, Idaho Code, a land surveyor shall be allowed to practice professional land surveying as defined in this chapter only when he has become duly licensed as a professional land surveyor by the board under this chapter. The practice of professional engineering or professional land surveying shall be deemed a privilege granted by the Idaho board of licensure of professional engineers and professional land surveyors through the board, based on qualifications of the individuals as evidenced by the person's license, which shall not be transferable.

History.

1939, ch. 231, § 1, p. 516; am. 1957, ch. 234, § 1, p. 547; am. 1986, ch. 140, § 1, p. 375; am.

1996, ch. 357, § 1, p. 1185; am. 2001, ch. 247, § 1, p. 889; am. 2008, ch. 378, § 2, p. 1024.

STATUTORY NOTES

Cross References.

Board of licensure of professional engineers and professional land surveyors, § 54-1203.
Penalties for violations, § 54-1222.

first sentence, twice substituted "licensed" for "registered"; in the first and second sentences, deleted "registered or" preceding "licensed"; added the third sentence; and in the last sentence, substituted "licensure" for "registration" and "license" for "certificate of registration."

Amendments.

The 2008 amendment, by ch. 378, in the

JUDICIAL DECISIONS

Use of Unregistered Person.

It was negligence per se for the city to have had unauthorized personnel draft the "plans" for intersection where plaintiff's decedent was killed after hitting divider strip. *Jorstad v. City of Lewiston*, 93 Idaho 122, 456 P.2d 766 (1969), overruled on other grounds, *Independent Sch. Dist. v. Callister*, 97 Idaho 59, 539 P.2d 987 (1975).

Cited in: *Johnson v. Delane*, 77 Idaho 172, 290 P.2d 213 (1955); *Aero Serv. Corp. W. v. Benson*, 84 Idaho 416, 374 P.2d 277 (1962); *H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors*, 113 Idaho 646, 747 P.2d 55 (1987).

RESEARCH REFERENCES

A.L.R. — Right of architect or engineer licensed in one state to recover compensation for services rendered in another state, or in connection with construction in another state, where he was not licensed in the latter state. 32 A.L.R.3d 1151.

Surveyor's liability for mistake in, or misrepresentation as to accuracy of survey of real property. 35 A.L.R.3d 504.

Revocation or suspension of license of professional engineer. 64 A.L.R.3d 509.

54-1202. Definitions. — As used in this chapter, unless the context or subject matter requires otherwise:

(1) “Benchmark” means a material object, natural or artificial, whose elevation is referenced to an adopted datum.

(2) “Board” means the Idaho board of licensure of professional engineers and professional land surveyors, hereinafter provided by this chapter.

(3) “Business entity” means a corporation, professional corporation, limited liability company, professional limited liability company, general partnership, limited partnership, limited liability partnership, professional limited liability partnership or any other form of business except a sole proprietorship.

(4) “Consulting engineer” means a professional engineer whose principal occupation is the independent practice of professional engineering; whose livelihood is obtained by offering engineering services to the public; who is devoid of public, commercial and product affiliation that might tend to infer a conflict of interest; and who is cognizant of his public and legal responsibilities, and is capable of discharging them.

(5) “Engineer” means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences, and the principles and methods of engineering analysis and design, acquired by professional education and engineering experience.

(6) “Engineer intern” means a person who has qualified for, taken and passed an examination in the fundamentals of engineering subjects as provided in this chapter.

(7) “Land survey” means measuring the field location of corners that:

(a) Determine the boundary or boundaries common to two (2) or more ownerships;

(b) Retrace or establish land boundaries;

(c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or

(d) Plat lands and subdivisions thereof.

(8) “Land surveyor intern” means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in this chapter.

(9) “Professional engineer” means a person who has been duly licensed as a professional engineer by the board under this chapter.

(10) “Professional engineering” and “practice of professional engineering” mean any service or creative work offered to or performed for the public for any project physically located in this state, such as consultation, investigation, evaluation, planning, designing, teaching upper division engineering design subjects, and responsible charge of observation of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data. A person shall be construed to practice or offer to practice professional engineering within the meaning and intent of this chapter who practices or

offers to practice any of the branches of the profession of engineering for the public for any project physically located in this state or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter, or holds himself out as able to perform or who does perform for the public for any project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering.

(11) "Professional land surveying" and "practice of professional land surveying" mean responsible charge of land surveying to determine the correct boundary description, to establish or reestablish land boundaries, or to plat lands and subdivisions thereof. Any person shall be construed to practice or offer to practice professional land surveying who engages in professional land surveying, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional land surveyor, or who represents himself as able to perform or who does perform any professional land surveying service or work or any other service designated by the practitioner which is professional land surveying.

(12) "Professional land surveyor" means a person who is qualified by reason of his knowledge of the principles of land surveying acquired by education and practical experience to engage in the practice of professional land surveying and who has been duly licensed as a professional land surveyor by the board under this chapter.

(13) "Public" means any person, firm, corporation, partnership, company, government agency, institution or any other entity recognized by law.

(14) "Responsible charge" means the control and direction of engineering work, or the control and direction of land surveying work, requiring initiative, professional skill, independent judgment and professional knowledge of the content of relevant documents during their preparation. Except as allowed under section 54-1223, Idaho Code, reviewing, or reviewing and correcting, documents after they have been prepared by others does not constitute the exercise of responsible charge.

(15) "Rules of professional responsibility" means those rules, if any, promulgated by the board, as authorized by the Idaho Code.

(16) "Signature" means either: an original handwritten message identification containing the name of the person who applied it; or a digital signature which is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; and must be linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(17) "Standard design plan" means a building, structure, equipment or facility which is intended to be constructed or sited at multiple locations and for which some or all of the plans must be prepared by a professional engineer.

History.

1939, ch. 231, § 2, p. 516; am. 1957, ch. 234, § 2, p. 547; am. 1961, ch. 258, § 1, p. 422; am. 1978, ch. 170, § 1, p. 371; am. 1986, ch. 140, § 2, p. 375; am. 1996, ch. 357, § 2, p. 1185;

am. 2000, ch. 289, § 1, p. 991; am. 2001, ch. 247, § 2, p. 889; am. 2002, ch. 6, § 1, p. 6; am. 2007, ch. 219, § 1, p. 655; am. 2008, ch. 378, § 3, p. 1024; am. 2011, ch. 136, § 10, p. 383.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 219, redesignated former subsections (a) through (n) as (1) through (14); in subsection (8), deleted “the investigation, studies, design, construction or operation of” preceding “engineering work” and “record research, field retracement, office calculations, boundary determination and mapping of” following “direction of,” inserted “and professional knowledge of the content of relevant documents during their preparation,” and added the last sentence; and added subsection (15).

The 2008 amendment, by ch. 378, rewrote

the section to the extent that a detailed comparison is impracticable, alphabetizing the defined terms.

The 2011 amendment, by ch. 136, added subsections (1) and (7) and redesignated the subsequent subsections accordingly; and, in the first sentence in subsection (11), deleted “to convey” following “correct boundary description.”

Effective Dates.

Section 6 of S.L. 2007, ch. 219 provided that the act should take effect on and after July 1, 2007.

JUDICIAL DECISIONS**ANALYSIS**

Land surveying.
Practice of engineering.
Services rendered.

Land Surveying.

Aerial photography and photogrammetry cannot by an establishment of ground controls be brought within the definition of “land surveying” and does not constitute the determination of land “descriptions” or “the establishment or reestablishment of land boundaries” or “the plotting of lands” or “subdivisions” within this section. *Aero Serv. Corp. W. v. Benson*, 84 Idaho 416, 374 P.2d 277 (1962).

Practice of Engineering.

Plaintiff foreign corporation’s acts within this state did not constitute the practice of engineering or land surveying in that the

procuring of data within this state necessary for processing and production of the maps which plaintiff had agreed to furnish did not constitute the practice of engineering in this state. *Aero Serv. Corp. W. v. Benson*, 84 Idaho 416, 374 P.2d 277 (1962).

Services Rendered.

Services for drawing of plans for a building may be performed by either a professional architect or professional engineer where services can be rendered by either, since services of the two professions overlap each other. *Johnson v. Delane*, 77 Idaho 172, 290 P.2d 213 (1955).

54-1203. Idaho board of licensure of professional engineers and professional land surveyors. — A board to be known as the “Idaho board of licensure of professional engineers and professional land surveyors” is a division of the Idaho department of self-governing agencies and shall administer the provisions of this chapter. It shall consist of five (5) persons duly licensed as provided by this chapter, appointed by the governor from among nominees recommended by any organized and generally recognized state engineering society in this state for the professional engineer members or any organized and generally recognized state land surveying society in this state for the professional land surveyor member. The board shall be comprised of four (4) persons licensed as professional engineers and one (1) person licensed as a professional land surveyor. The members of the board

shall have the qualifications required by section 54-1204, Idaho Code. The members of the present board shall continue to serve for the balance of their respective terms of appointment. Each member of the board shall take, subscribe and file the oath required by chapter 4, title 59, Idaho Code, before entering upon the duties of the office. On the expiration of the term of any member, a successor shall be appointed in like manner by the governor for a term of five (5) years. Any appointment to complete a term that has not expired, because of resignation or inability of a member to serve for any reason, shall be for the unexpired portion of the term. A member of the board shall hold office until the expiration of the term for which he was appointed and until his successor has been appointed and qualified. A member after serving two (2) consecutive full terms in addition to any unexpired portion of a term, shall not be reappointed for a period of two (2) years. The board, on its own initiative, may appoint any former member as an emeritus member for special assignment to assist the board in the administration of this chapter.

History.

1939, ch. 231, § 3, p. 516; am. 1974, ch. 13, § 109, p. 138; am. 1978, ch. 170, § 2, p. 371;

am. 1986, ch. 140, § 3, p. 375; am. 1996, ch. 357, § 3, p. 1185; am. 2008, ch. 378, § 4, p. 1028.

STATUTORY NOTES**Cross References.**

Department of self-governing agencies, § 67-2601.

Amendments.

The 2008 amendment, by ch. 378, in the

section catchline and in the first sentence, substituted "licensure" for "registration"; throughout the second and third sentences, substituted "licensed" for "registered"; and in the last sentence, substituted "an emeritus member" for "a member emeritus."

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 36.

54-1204. Qualification of members of board. — Members of the board shall be citizens of the United States and residents of this state, and they shall have been engaged for at least twelve (12) years in the practice of engineering for the professional engineer members or land surveying for the professional land surveyor member, shall have been in responsible charge for at least five (5) years of important professional engineering or professional land surveying work, and shall be licensed under the provisions of this chapter. Responsible charge of engineering or land surveying teaching may be construed as responsible charge of important professional engineering or professional land surveying work.

History.

1939, ch. 231, § 4, p. 518; am. 1957, ch. 234, § 3, p. 547; am. 1978, ch. 170, § 3, p. 371; am.

1986, ch. 140, § 4, p. 375; am. 1996, ch. 357, § 4, p. 1185; am. 2008, ch. 378, § 5, p. 1028.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, substi-

tuted “licensed” for “registered” near the end of the first sentence.

54-1205. Compensation and expenses of board members. — Each member of the board shall be compensated as provided by section 59-509(i), Idaho Code, when attending to the work of the board or any of its committees and for the time spent in necessary travel; and, in addition thereto, shall be reimbursed for all actual travel, per diem, incidentals and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

History.

1939, ch. 231, § 5, p. 516; am. 1957, ch. 234, § 4, p. 547; am. 1978, ch. 170, § 4, p. 371; am.

1980, ch. 247, § 59, p. 582; am. 1986, ch. 140, § 5, p. 375; am. 2000, ch. 289, § 2, p. 991; am. 2007, ch. 219, § 2, p. 655.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 219, substituted “section 59-509(i)” for “section 59-509(h)”.

Effective Dates.

Section 6 of S.L. 2007, ch. 219 provided that the act should take effect on and after July 1, 2008.

54-1206. Removal of board members and filling vacancies. — The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any reason prescribed in the Idaho Code for removal of state officials. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as provided in section 54-1203, Idaho Code.

History.

1939, ch. 231, § 6, p. 516; am. 1986, ch. 140, § 6, p. 375.

54-1207. Board — Organization and meetings. — The board shall hold at least one (1) regular meeting each year. The rules of the board may provide for additional regular meetings and for special meetings. Notice of all meetings shall be given as may be provided in the rules. The board shall annually elect a chairman, a vice-chairman and a secretary, who shall be members of the board, and they may provide for an assistant or executive director who need not be a member of the board. Three (3) members shall constitute a quorum.

History.

1939, ch. 231, § 7, p. 516; am. 1978, ch. 170,

§ 5, p. 371; am. 1996, ch. 357, § 5, p. 1185; am. 2000, ch. 289, § 3, p. 991.

54-1208. Board — Powers. — (1) The board shall have the power to adopt and amend administrative rules including, but not limited to, rules of professional responsibility, rules of continuing professional development not to exceed sixteen (16) hours annually for each profession for which the professional is licensed, and rules of procedure, not inconsistent with the

constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the administration of the chapter and the regulation of proceedings before the board. These actions by the board shall be binding upon persons licensed under this chapter and shall be applicable to business entities holding a certificate of authorization as provided in section 54-1235, Idaho Code. It shall adopt and have an official seal which shall be affixed to each license and certificate issued. It shall have power to provide an office, office equipment and facilities and such books and records as may be reasonably necessary for the proper performance of its duties.

(2) In carrying into effect the provisions of this chapter, the board may subpoena witnesses and compel their attendance, and also may require the submission of books, papers, documents, or other pertinent data in any disciplinary matters or in any case wherever a violation of this chapter is alleged. Upon failure or refusal to comply with any such order of the board, or upon failure to honor its subpoena as herein provided, the board may apply to any court of any jurisdiction to enforce compliance with same.

(3) The board is hereby authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this chapter or to restrain any violation thereof. Venue for all such actions shall be in the district court of the fourth judicial district, Ada county, Idaho.

(4) The board may subject an applicant for licensure or certification to such examination as it deems necessary to determine qualifications.

(5) Any action, claim or demand to recover money damages from the board or its employees which any person is legally entitled to recover as compensation for the negligent or otherwise wrongful act or omission of the board or its employees, when acting within the course and scope of their employment, shall be governed by the Idaho tort claims act, chapter 9, title 6, Idaho Code. For purposes of this section, the term "employees" shall include, in addition to those persons listed in section 6-902(4), Idaho Code, special assignment members, emeritus members and any independent contractors while acting within the course and scope of their board related work.

(6) The board may recommend arbitration of disputes between professional engineers or disputes between professional land surveyors.

History.

1939, ch. 231, § 8, p. 516; am. 1957, ch. 234, § 5, p. 547; am. 1963, ch. 22, § 1, p. 163; am. 1974, ch. 13, § 110, p. 138; am. 1986, ch. 140, § 7, p. 375; am. 1990, ch. 192, § 1, p. 424; am.

1998, ch. 220, § 6, p. 753; am. 1999, ch. 273, § 1, p. 685; am. 2000, ch. 289, § 4, p. 991; am. 2001, ch. 247, § 3, p. 889; am. 2008, ch. 378, § 6, p. 1029.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, in subsection (1), in the first sentence, substituted "administrative rules including, but not limited to" for "all bylaws," deleted "for professional land surveyors" following "annually,"

and inserted "for each profession for which the professional is licensed," in the second sentence, substituted "licensed" for "registered," and in the third sentence, inserted "license and"; in subsection (4), substituted "licensure or certification" for "registration";

and in subsection (5), substituted “assignment members, emeritus members and any independent contractors” for “assignment members and other independent contractors.”

JUDICIAL DECISIONS

Cited in: H & V Eng’g, Inc. v. Idaho State Bd. of Professional Eng’rs & Land Surveyors, 113 Idaho 646, 747 P.2d 55 (1987).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 36, 37.

54-1209. Receipts and disbursements. — The secretary of the board, or assistants thereto as may be designated by the board, shall receive and account for all moneys derived under the provisions of this chapter, and shall pay the same to the state treasurer, who shall keep such moneys in a separate account to be known as the “professional engineers’ and professional land surveyors’ account.” Such moneys shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only on approval of the board. All moneys in the “professional engineers’ and professional land surveyors’ account” are hereby specifically appropriated for the use of the board. The secretary and executive director of the board shall be bonded to the state of Idaho in the time, form and manner prescribed in chapter 8, title 59, Idaho Code. The executive director of the board shall receive such salary as the board shall determine in addition to the expenses provided for in section 54-1205, Idaho Code. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures from this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this chapter, including the expenses of the board’s delegates to annual conventions of, and membership dues to, the National Council of Examiners for Engineering and Surveying and any of its subdivisions. Under no circumstances shall the total amount of expenditures approved by the board in payment of the expenses and compensation provided for in this chapter exceed the accumulated amount of the fees collected as herein provided. All warrants on said “professional engineers’ and professional land surveyors’ account” shall be drawn by the state controller on vouchers by the board and the state board of examiners.

History.

1939, ch. 231, § 9, p. 516; am. 1971, ch. 136, § 35, p. 522; am. 1978, ch. 170, § 6, p. 371; am. 1986, ch. 140, § 8, p. 375; am. 1990, ch.

192, § 2, p. 424; am. 1994, ch. 180, § 97, p. 420; am. 1996, ch. 357, § 6, p. 1185; am. 2000, ch. 289, § 5, p. 991.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.

iners for Engineering and Surveying, see <http://www.ncees.org>.

Effective Dates.

Section 87 of S.L. 1971, ch. 136 declared an emergency. Approved March 18, 1971.

Compiler’s Notes.

For more on the National Council of Exam-

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R.

No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 97 of S.L. 1994, ch. 180 became effective January 2, 1995.

54-1210. Records and reports. — (1) The board shall keep a record of its proceedings and a record of all applications for licensure or certification, which record shall show: the name, date of birth and last known address of each applicant; the date of the application; the place of business of such applicant; his education, experience and other qualifications; type of examination required; whether or not the applicant was rejected; whether or not a certificate or license was granted; the dates of the action of the board; and any other information as may be deemed necessary by the board.

(2) The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and minutes thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

(3) Annually the board shall submit to the governor a report of its activities of the preceding year, and shall also transmit to him a summary statement of the receipts and expenditures of the board.

(4) Board records and papers are subject to disclosure according to chapter 3, title 9, Idaho Code.

History.

1939, ch. 231, § 10, p. 516; am. 1957, ch. 234, § 6, p. 547; am. 1986, ch. 140, § 9, p.

375; am. 1990, ch. 213, § 76, p. 480; am. 1996, ch. 357, § 7, p. 1185; am. 2008, ch. 378, § 7, p. 1030.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, in subsection (1), substituted “and a record of all applications for licensure or certification, which record shall show” for “and a register of all applications for registration, which registration shall show” and “certificate or license” for “certificate of registration”; in subsection (2), substituted “and minutes thereof” for “and a transcript thereof”; and in subsection (3), substituted “activities” for “transactions” and “summary statement” for “complete

statement,” and deleted “attested by affidavits of its chairman and its secretary” from the end.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should become effective July 1, 1990.

54-1211. Roster. — A complete roster showing the names and last known addresses of all professional engineers, all professional land surveyors, all business entities holding certificates of authorization as required under section 54-1235, Idaho Code, and all who possess current certification as engineer interns and as land surveyor interns shall be maintained by the board in an electronic format available to the public.

History.

1939, ch. 231, § 11, p. 516; am. 1961, ch. 258, § 2, p. 422; am. 1963, ch. 28, § 1, p. 169; am. 1978, ch. 170, § 7, p. 371; am. 1986, ch.

140, § 10, p. 375; am. 1991, ch. 30, § 11, p. 58; am. 1996, ch. 357, § 8, p. 1185; am. 2000, ch. 289, § 6, p. 991; am. 2008, ch. 378, § 8, p. 1030.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, twice deleted “registered” preceding “professional,” inserted “business,” and substituted “engi-

neer interns and as land surveyor interns” for “engineers in training and as land surveyors in training.”

54-1212. General requirements for examination and license. — Except as herein otherwise expressly provided, no license as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, shall be issued until an applicant has successfully passed an examination given by or under the supervision of the board, nor shall a license as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, be issued to an applicant having habits or character that would justify revocation or suspension of his license or certificate, as provided in section 54-1220, Idaho Code. Except for military personnel stationed in the state of Idaho on military orders and except for persons employed full-time in the state of Idaho, only residents of the state of Idaho and students enrolled at an Idaho university or college may qualify for assignment to examinations for initial certification or licensure. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for assignment to an examination:

(1) As a professional engineer:

- (a) Graduation from an approved engineering program of four (4) years or more in a school or college approved by the board as being of satisfactory standing, passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record, after graduation, of an additional four (4) years or more of progressive experience in engineering work of a grade and character satisfactory to the board, and indicating that the applicant is competent to practice professional engineering; or
- (b) Graduation with a bachelor’s degree in a related science from a school or college approved by the board, and evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering program, passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record, after graduation, of four (4) years or more of progressive experience in engineering work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice professional engineering.

(2) As a professional land surveyor:

- (a) Graduation from an approved surveying program of four (4) years or more in a school or college approved by the board as being of satisfactory standing, passage of an examination on the fundamentals of surveying acceptable to the board, and a specific record of an additional four (4)

years or more of progressive combined office and field experience in land surveying work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice professional land surveying; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board as being of satisfactory standing, and evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year surveying program, passage of an examination on the fundamentals of surveying acceptable to the board, and a specific record of an additional four (4) years or more of progressive combined office and field experience in land surveying work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice land surveying.

(3) As an engineer intern:

(a) Graduation from or in the last two (2) semesters of an approved engineering program of four (4) years or more in a school or college approved by the board as being of satisfactory standing and indicating that the applicant is competent to enroll as an engineer intern; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board, and evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering program, and indicating that the applicant is competent to be enrolled as an engineer intern.

(c) In the event the applicant qualifies for assignment to the examination during the last two (2) semesters of college under the provisions of section 54-1212(3)(a), Idaho Code, and a passing grade is attained, a certificate will be issued only after the applicant graduates.

(4) As a land surveyor intern:

(a) Graduation from, or in the last two (2) semesters of, an approved surveying program of four (4) years or more in a school or college approved by the board as being of satisfactory standing and indicating that the applicant is competent to be enrolled as a land surveyor intern; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board, evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year surveying program, and indicating that the applicant is competent to be enrolled as a land surveyor intern.

(c) In the event the applicant qualifies for assignment to the examination during the last two (2) semesters of college under the provisions of subsection (4)(a) of this section, and attains a passing grade, a certificate shall be issued only after the applicant graduates.

In counting years of experience for assignment to the professional engineer or professional land surveyor examination, the board may, at its discretion, give credit, not in excess of one (1) year, for satisfactory graduate study toward a master's degree and not in excess of an additional one (1)

year for satisfactory graduate study toward a doctorate degree. In the event an applicant obtains a doctorate degree without first obtaining a master's degree, the board may, at its discretion, give credit, not in excess of two (2) years.

In considering the combined education and experience qualifications of applicants, the board shall consider engineering teaching, land surveying teaching, each year of satisfactory completion of undergraduate college education, advanced degrees in engineering and advanced degrees in land surveying in establishing the applicants' minimum composite knowledge and skill.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent, shall not be deemed to be the practice of engineering, but if such experience, in the opinion of the board, has involved responsible supervision of a character that will tend to expand the engineering knowledge and skill of the applicant the board may in its discretion give such credit therefor as it may deem proper.

Any person having the necessary qualifications prescribed in this chapter to entitle him to assignment to an examination for licensure or certification shall be eligible for such assignment although he may not be practicing his profession at the time of making his application.

The board may postpone acting on an application for assignment to any examination if disciplinary or criminal action related to the applicant's practice has been taken or is pending in any other jurisdiction. The board may postpone the release of scores to applicants on any examination if there is any unresolved examination irregularity involving the applicant. The board may investigate and adjudicate the validity of examination irregularities and if the examination irregularities are substantiated, the board may invalidate the score of the applicant.

History.

1939, ch. 231, § 12, p. 516; am. 1957, ch. 234, § 7, p. 547; am. 1961, ch. 258, § 3, p. 422; am. 1978, ch. 170, § 8, p. 371; am. 1986, ch. 140, § 11, p. 375; am. 1990, ch. 192, § 3, p. 424; am. 1992, ch. 61, § 1, p. 192; am. 1996,

ch. 357, § 9, p. 1185; am. 1997, ch. 189, § 1, p. 514; am. 2000, ch. 289, § 7, p. 991; am. 2002, ch. 125, § 1, p. 349; am. 2003, ch. 15, § 2, p. 43; am. 2004, ch. 84, § 2, p. 312; am. 2008, ch. 378, §§ 9, 10, p. 1030; am. 2010, ch. 111, § 1, p. 223; am. 2012, ch. 24, § 1, p. 78.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, § 9, throughout the section, substituted "engineer intern" for "engineer in training" and "surveyor intern" for "surveyor in training"; in the introductory paragraph, inserted "his license"; in subsections (2)(a) and (2)(b), deleted "land" preceding the second occurrence of "surveying"; and in the last paragraph, substituted "assignment" for "registration," and inserted "to an examination for licensure or certification."

The 2008 amendment, by ch. 378, § 10,

throughout the section, substituted "engineer intern" for "engineer in training" and "surveyor intern" for "surveyor in training"; in the introductory paragraph, inserted "his license"; in subsections (2)(a) and (2)(b), deleted "land" preceding the second occurrence of "surveying"; and in the last paragraph, substituted "assignment" for "registration," and inserted "to an examination for licensure or certification."

The 2010 amendment, by ch. 111, substituted "program" for "curriculum" throughout the section.

The 2012 amendment, by ch. 24, added the second sentence in the introductory paragraph and added the last paragraph.

the act should take effect on and after July 1, 2010.

Effective Dates.

Section 2 of S.L. 2002, ch. 125 provided that

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 36 to 38.

54-1213. Applications and fees. — Applications for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, shall be on forms prescribed and furnished by the board. The application shall show the applicant's education and a detailed summary of his engineering or land surveying experience. An applicant for licensure as a professional engineer or professional land surveyor shall furnish not less than five (5) references, of whom three (3) or more should be professional engineers or professional land surveyors, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. Applications for certificates of authorization shall be made in accordance with section 54-1235, Idaho Code.

The maximum application fee for professional engineers or professional land surveyors seeking to be licensed by examination shall not exceed one hundred dollars (\$100). The application fee shall accompany the application. The examination fee, which shall be separate from the application fee, shall be paid by the applicant directly to the entity designated by the board.

The maximum application fee for an applicant who seeks a certificate as an engineer intern or land surveyor intern shall not exceed fifty dollars (\$50.00). The application fee shall accompany the application. The examination fee, which shall be separate from the application fee, shall be paid by the applicant directly to the entity designated by the board.

The maximum application fee for business entities seeking a certificate of authorization shall be two hundred dollars (\$200). The application fee shall accompany the application.

The amount of the license fee or certificate fee shall be fixed by the board prior to June 30 of any year and shall continue in force until changed.

Should the board deny the issuance of a certificate or license to any applicant, the application fee paid shall be retained as a processing fee.

History.

1939, ch. 231, § 13, p. 516; am. 1957, ch. 234, § 8, p. 547; am. 1961, ch. 258, § 4, p. 422; am. 1963, ch. 23, § 1, p. 164; am. 1970, ch. 95, § 1, p. 238; am. 1978, ch. 170, § 9, p. 371; am. 1984, ch. 254, § 1, p. 605; am. 1986, ch. 140, § 12, p. 375; am. 1990, ch. 192, § 4, p.

424; am. 1996, ch. 357, § 10, p. 1185; am. 1998, ch. 220, § 7, p. 753; am. 2000, ch. 289, § 8, p. 991; am. 2001, ch. 247, § 4, p. 889; am. 2004, ch. 84, § 3, p. 312; am. 2008, ch. 378, § 11, p. 1035; am. 2009, ch. 20, § 1, p. 46; am. 2010, ch. 111, § 2, p. 223; am. 2012, ch. 24, § 2, p. 78.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, in the

section catchline, deleted "registration" preceding "fees"; in the introductory paragraph,

twice substituted "licensure" for "registration," "engineer intern" for "engineer in training," and "survey intern" for "surveyor in training," and deleted "technical and" preceding "engineering" and twice deleted "registered" preceding "professional engineers"; in the third paragraph, substituted "engineer intern or land surveyor intern" for "engineer in training or land surveyor in training"; deleted the former fifth paragraph, which read: "Separate application fees shall accompany all applications for each of the four (4) classes of examinations: professional land surveyor, engineer in training, land surveyor in training and professional engineer"; and in the last paragraph, deleted "of registration" following "certificate," and substituted "license" for "authorization," "paid" for "deposited," and "a processing fee" for "an application fee."

The 2009 amendment, by ch. 20, in the second paragraph, substituted "shall not exceed one hundred dollars," and, in the third paragraph, substituted "shall not exceed fifty dollars (\$50)" for "shall be an amount equal to

the amount charged the board by the entity preparing and administering the examination, plus an administrative fee not to exceed one hundred dollars"; added the last sentence in the second and third paragraphs; and, in the second paragraph, deleted "total" preceding "application fee" in the second sentence.

The 2010 amendment, by ch. 111, in the first paragraph, deleted the former next-to-last sentence, which read: "An applicant for certification as an engineer intern or land surveyor intern shall furnish not less than three (3) references of whom at least one (1) should be a professional engineer or professional land surveyor, as applicable, having personal knowledge of the applicant's engineering or land surveying experience"; and in the second paragraph, deleted "an eight (8) hour or longer" preceding the first occurrence of "examination."

The 2012 amendment, by ch. 24, deleted "shall be made under oath, and" following "The application" at the beginning of the second sentence in the first paragraph.

54-1214. Examinations. — (1) Examinations will be held at such times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in section 54-1212, Idaho Code, and has been approved by the board for admission to the examinations as follows:

(a) Fundamentals of Engineering — The examination consists of a test on the fundamentals of engineering acceptable to the board. Passing this examination qualifies the examinee for an engineer intern certificate, provided he has met all other requirements of certification required by this chapter.

(b) Principles and Practice of Engineering — The examination consists of a test on applied engineering acceptable to the board. Passing this examination qualifies the examinee for licensure as a professional engineer, provided he has met the other requirements for licensure required by this chapter.

(c) Fundamentals of Surveying — The examination consists of a test on the fundamentals of surveying acceptable to the board. Passing this examination qualifies the examinee for a land surveyor intern certificate, provided he has met all other requirements for certification required by this chapter.

(d) Principles and Practice of Surveying — The examination consists of a test on applied surveying acceptable to the board. Passing this examination qualifies the examinee for licensure as a professional land surveyor, provided he has met the other requirements for licensure required by this chapter.

(3) A candidate failing all or part of an examination for the first time may apply for reexamination, which may be granted upon payment of an

application fee equal to the application fee for the required examination plus a separate examination fee paid by the applicant directly to the entity designated by the board. In the event of a second failure, the examinee shall be required to obtain a minimum of one (1) additional year of experience, acceptable to the board, from the date of the second examination failure, and submit evidence of having completed an additional eight (8) semester credits of college level academic education relating to the examination, before the board will consider that he has acquired the necessary additional knowledge to warrant assignment to a third examination. The separate application and examination fees shall be as set forth herein. In the event of a third or subsequent failure, the examinee shall be required to obtain a minimum of three (3) additional years of experience, acceptable to the board, from the date of the third or subsequent examination failure, and submit evidence of having completed an additional twelve (12) semester credits of college level academic education relating to the examination, before the board will consider that he has acquired the necessary additional knowledge to warrant assignment to a subsequent examination. The separate application and examination fees shall be as set forth herein.

(4) The board may prepare and adopt specifications for the written examinations in engineering and land surveying.

History.

1939, ch. 231, § 14, p. 516; am. 1957, ch. 234, § 9, p. 547; am. 1961, ch. 258, § 5, p. 422; am. 1970, ch. 95, § 2, p. 238; am. 1978, ch. 170, § 10, p. 371; am. 1984, ch. 254, § 2, p. 605; am. 1986, ch. 140, § 13, p. 375; am. 1990,

ch. 192, § 5, p. 424; am. 1996, ch. 357, § 11, p. 1185; am. 1998, ch. 220, § 8, p. 753; am. 2000, ch. 289, § 9, p. 991; am. 2008, ch. 378, § 12, p. 1036; am. 2009, ch. 20, § 2, p. 46; am. 2010, ch. 111, § 3, p. 223.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, rewrote the section to the extent that a detailed comparison is impracticable.

The 2009 amendment, by ch. 20, in subsection (3), in the first sentence, substituted “payment of an application fee equal to the application fee” for “payment of a fee equal to the total application fee” and added “plus a separate examination fee paid by the applicant directly to the entity designated by the board,” and added the third and last sentences.

The 2010 amendment, by ch. 111, in the introductory paragraph in subsection (2), deleted “will be given in (2) sections and” following “Written examinations”; in paragraphs (2)(a) through (2)(d), inserted “acceptable to the board”; in paragraphs (2)(a) and (2)(c), substituted “a test” for “an eight (8) hour test”; and in paragraphs (2)(b) and (2)(d), deleted “minimum of an eight (8) hour” preceding “test.”

54-1215. License — Seals — Intern certificates. — (1) The board shall issue a license upon payment of the fee as provided for in this chapter to any applicant who, in the opinion of the board, has satisfactorily met all of the requirements of this chapter for licensure as a professional engineer or professional land surveyor, and a certificate shall be issued to those who qualify as an engineer intern or a land surveyor intern. In the case of a professional engineer, the license shall authorize the practice of “professional engineering,” and in the case of a professional land surveyor the license shall authorize the practice of “professional land surveying.” Li-

censes shall show the full name of the licensee, shall give a license number, and shall be signed by the chairman and the secretary of the board under seal of the board.

(2) The issuance of a license by the board shall be prima facie evidence that the person named therein is entitled to all the rights, privileges and responsibilities of a licensed professional engineer or of a licensed professional land surveyor, provided that said license has not expired or has not been suspended or revoked.

(3) Each licensee hereunder shall, upon licensure, obtain a seal, the use and design of which are described below. It shall be unlawful for any person to affix or to permit his seal and signature to be affixed to any documents after the license of the licensee named thereon has expired or has been suspended or revoked, unless said license shall have been renewed, reinstated, or reissued, or for the purpose of aiding or abetting any other person to evade or attempt to evade any portion of this chapter.

(a) The seal may be a rubber stamp, crimp or electronically generated image. Whenever the seal is applied, the licensee's signature and date shall also be included. If the signature is handwritten, it shall be adjacent to or across the seal. No further words or wording is required. A facsimile signature generated by any method will not be acceptable unless accompanied by a digital signature.

(b) The seal, signature and date shall be placed on all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or governmental agency. Any such document presented to a client or public or governmental agency that is not final and does not contain a seal, signature and date shall be clearly marked as "draft," "not for construction" or with similar words to distinguish the document from a final document. In the event the final work product is preliminary in nature or contains the word "preliminary," such as a "preliminary engineering report," the final work product shall be sealed, signed and dated as a final document if the document is intended to be relied upon to make policy decisions important to the life, health, property, or fiscal interest of the public.

(c) The seal and signature of the licensee and date shall be placed on all original documents in such a manner that such seal, signature and date are reproduced when the original document is copied. The application of the licensee's seal and signature and the date shall constitute certification that the work thereon was done by him or under his responsible charge. Each plan or drawing sheet shall be sealed and signed and dated by the licensee or licensees responsible for each sheet. In the case of a business entity, each plan or drawing sheet shall be sealed and signed and dated by the licensee or licensees involved. Copies of electronically produced documents, listed in paragraph (b) of this subsection, distributed for informational uses such as for bidding purposes or working copies, may be issued with the licensee's seal and a notice that the original document is on file with the licensee's signature and the date. The words "Original Signed By:" and "Date Original Signed:" shall be placed adjacent to or across the seal on the electronic original. The storage location of the

original document shall also be provided. Only the title page of reports, specifications and like documents need bear the seal and signature of the licensee and the date.

(d) The seal and signature shall be used by licensees only when the work being stamped was under the licensee's responsible charge.

(e) The design of the seal shall be as determined by the board.

(4) The board shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter, a certificate as an engineer intern or land surveyor intern. The engineer intern or land surveyor intern certificate does not authorize the certificate holder to practice as a professional engineer or a professional land surveyor.

History.

1939, ch. 231, § 15, p. 516; am. 1957, ch. 234, § 10, p. 547; am. 1961, ch. 258, § 6, p. 422; am. 1978, ch. 170, § 11, p. 371; am. 1986, ch. 140, § 14, p. 375; am. 1996, ch. 357, § 12,

p. 1185; am. 1997, ch. 49, § 1, p. 83; am. 2000, ch. 289, § 10, p. 991; am. 2001, ch. 247, § 5, p. 889; am. 2002, ch. 6, § 2, p. 6; am. 2007, ch. 219, § 3, p. 655; am. 2008, ch. 378, § 13, p. 1037.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 219, in subsection (3)(b), deleted "preliminary" preceding "draft," and added the last sentence; and in subsection (3)(c), added "in such a manner that such seal, signature and date are reproduced when the original document is copied" in the first sentence, and deleted the former fifth sentence, which read: "The principal in responsible charge shall sign and seal the title or first sheet."

The 2008 amendment, by ch. 378, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 6 of S.L. 2007, ch. 219 provided that the act should take effect on and after July 1, 2007.

54-1216. Expirations and renewals — Fees. — Following issuance or renewal of licenses for professional engineers and professional land surveyors, expiration shall be on the last day of the month during which the licensee was born, in even-numbered state of Idaho fiscal years for those born in even-numbered calendar years and in odd-numbered state of Idaho fiscal years for those born in odd-numbered calendar years, and shall become invalid on that date unless renewed. On or after July 1, 2010, the executive director of the board shall send renewal notices to business entities that have been issued a certificate of authorization. The renewal fee amount shall be for a period of one (1) year plus a prorated annual renewal fee amount for the number of months from and including August to and including the month in which the certificate of authorization was originally issued. Thereafter, certificates of authorization for business entities shall expire on the last day of the month in which the certificates were initially issued and shall become invalid on that date unless renewed. It shall be the duty of the board to notify every person licensed and every business entity certified under this chapter, of the date of the expiration of said license or certificate of authorization and the amount of the fee that shall be required for its renewal. Such notice shall be mailed to the last known address of the licensee or business entity at least one (1) month in advance of the date of the expiration of said license or certificate of authorization. Renewal shall be

effective at any time in the appropriate year during the month in which the licensee was born or during the month in which the certificates were initially issued in the case of business entities, by the payment of a renewal fee to be fixed by the board at not more than one hundred fifty dollars (\$150). The failure on the part of any licensee or certificate holder to renew his or its license or certificate biennially in the month in which they were born or in the month in which the certificates were initially issued in the case of business entities, as required above shall not deprive such person or business entity of the right of renewal, but the fee to be paid for the renewal of a license or certificate after the month in which it is due shall be increased twenty percent (20%) for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the renewal fee for each renewal cycle delinquent, but in no event more than three hundred dollars (\$300). Any work performed after a license or certificate of authorization has expired, but before delayed renewal has been effected, shall become valid upon delayed renewal as if the license or certificate of authorization had not expired, but the licensee or certificate holder may be subject to disciplinary action by the board for practice on an expired license or such other action as provided pursuant to this chapter.

Following issuance or renewal of certificates for engineer interns and land surveyor interns, expiration shall be on the last day of the month during which the certificate holder was born, in even-numbered state of Idaho fiscal years for those born in even-numbered calendar years and in odd-numbered state of Idaho fiscal years for those born in odd-numbered calendar years. The notification to holders of certificates shall be processed as prescribed above for licensees except that the biennial renewal fee shall not be more than thirty dollars (\$30.00). The failure on the part of any holder of a certificate to effect renewal shall not invalidate his status as an engineer intern or land surveyor intern, but his name shall be removed from the board's mailing list.

History.

1939, ch. 231, § 16, p. 516; am. 1953, ch. 162, § 1, p. 257; am. 1961, ch. 258, § 7, p. 422; am. 1963, ch. 24, § 1, p. 166; am. 1970, ch. 95, § 3, p. 238; am. 1978, ch. 170, § 12, p. 371; am. 1979, ch. 111, § 1, p. 355; am. 1984,

ch. 254, § 3, p. 605; am. 1986, ch. 140, § 15, p. 375; am. 1990, ch. 192, § 6, p. 424; am. 1996, ch. 357, § 13, p. 1185; am. 2000, ch. 289, § 11, p. 991; am. 2001, ch. 247, § 6, p. 889; am. 2008, ch. 378, § 14, p. 1038; am. 2010, ch. 111, § 4, p. 223.

STATUTORY NOTES**Cross References.**

Military exemption from fees, § 67-2602A.

Amendments.

The 2008 amendment, by ch. 378, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 111, in the first paragraph, added the second and third

sentences, in the fourth sentence, added "Thereafter," and substituted "last day of the month in which the certificates were initially issued" for "last day of the month of July following issuance or renewal," and in the seventh and eighth sentences, substituted "month in which the certificates were initially issued" for "month of July."

54-1217. Practitioners at time act becomes effective. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1939, ch. 231, § 17, p. 516; am. 1978, ch. 170, § 13, p.

371; am. 1986, ch. 140, § 16, p. 375; am. 1990, ch. 192, § 7, p. 424, was repealed by S.L. 1996, ch. 357, § 14, effective July 1, 1996.

54-1218. Public work. — It shall be unlawful for this state, or for any county, city, school district, irrigation district, drainage district, highway district, or other subdivision of the state, having power to levy taxes or assessments against property situated therein, to engage in the construction of any public work when the public health or safety is involved unless the plans and specifications and estimates have been prepared by, and the construction reviewed by a professional engineer.

History.

1939, ch. 231, § 18, p. 516; am. 1978, ch.

170, § 14, p. 371; am. 2008, ch. 378, § 15, p. 1039.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 378, deleted

“registered” preceding “professional engineer.”

JUDICIAL DECISIONS**ANALYSIS**

Applicability to chartered cities.

Violation as negligence.

Applicability to Chartered Cities.

The city of Lewiston cannot use its charter to avoid setting any professional standards whatsoever, as the standards set by this section do not conflict with Lewiston's charter, rather they complement the charter. *Jorstad v. City of Lewiston*, 93 Idaho 122, 456 P.2d 766 (1969), overruled on other grounds, *Independent Sch. Dist. v. Callister*, 97 Idaho 59, 539 P.2d 987 (1975).

had unauthorized personnel draft the “plans” for intersection where plaintiff's decedent was killed after hitting the divider strip. *Jorstad v. City of Lewiston*, 93 Idaho 122, 456 P.2d 766 (1969), overruled on other grounds, *Independent Sch. Dist. v. Callister*, 97 Idaho 59, 539 P.2d 987 (1975).

Cited in: *Kolar v. Cassia County Idaho*, 142 Idaho 346, 127 P.3d 962 (2005).

Violation as Negligence.

It was negligence per se for the city to have

54-1219. Comity licensure — Fee. — The board, upon application therefor and the payment of a fee of not to exceed a maximum of one hundred fifty dollars (\$150), may issue a license as a professional engineer or professional land surveyor to any person who holds a license issued to the applicant by the proper authority of any state, territory or possession of the United States, the District of Columbia, or of a foreign country, provided that, in the opinion of the board, the applicant possesses the education, experience and examination credentials, or their equivalents, that were specified in the applicable licensing chapter in effect in this state at the time such license was issued, provided that a professional land surveyor applicant must successfully pass a land surveying examination as prepared and

administered by the board, and provided such state, territory, possession or country will license, without examination and upon substantially the same condition, to applicants holding licenses issued by the board under this chapter. In the event the applicant has been licensed and has practiced as a professional engineer or professional land surveyor in another jurisdiction for a minimum of eight (8) years, has no outstanding disciplinary action, and is in good standing under a licensing system which, in the opinion of the board, maintains substantially equivalent professional standards as required under this chapter, the board may, in its discretion, waive the requirement for satisfaction of prescriptive credentials in education and examination. The board may postpone acting on an application for a license by comity if disciplinary or criminal action related to the applicant's practice has been taken or is pending in any other jurisdiction.

History.

1939, ch. 231, § 19, p. 516; am. 1957, ch. 234, § 11, p. 547; am. 1961, ch. 258, § 8, p. 422; am. 1970, ch. 95, § 4, p. 238; am. 1978, ch. 170, § 15, p. 371; am. 1984, ch. 254, § 4, p.

605; am. 1986, ch. 140, § 17, p. 375; am. 1990, ch. 192, § 8, p. 424; am. 1996, ch. 357, § 15, p. 1185; am. 2003, ch. 15, § 3, p. 43; am. 2008, ch. 378, § 16, p. 1040; am. 2012, ch. 24, § 3, p. 78.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, in the section catchline, substituted "licensure" for "registration"; and in text, twice substituted "license" for "certificate of registration," substituted "licensing" for "registration" and the third occurrence of "license" for "certificate,"

deleted "or issue certificates of registration" preceding "without examination" and "or certificates of registration" preceding "issued by the board," and added the last sentence.

The 2012 amendment, by ch. 24, added the last sentence.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 37.

54-1220. Disciplinary action — Procedures. — (1) Any affected party may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct or violation of any provision of this chapter, or violation of any of the rules promulgated by the board against any individual licensee or certificate holder or against any business entity holding a certificate of authorization or against a person applying for a license or against a business entity applying for a certificate of authorization. Repeated acts of negligence may be considered as a gross act for disciplinary action. Such charges shall be in writing, and shall be sworn to by the person or persons making them and shall be filed with the executive director of the board. The executive director of the board shall be considered an affected party and may be the person making and filing the charges.

(2) All charges, unless dismissed by the board as unfounded or trivial, or unless settled informally, shall be heard by the board within six (6) months after the date they were received at the board office unless such time is extended by the board for justifiable cause.

(3) Administrative proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(4) If, after an administrative hearing, the board votes in favor of sustaining the charges, the board may, in its discretion, impose an administrative penalty, not to exceed five thousand dollars (\$5,000) for deposit in the general fund of the state of Idaho. In addition, the board, in its discretion, may admonish, reprimand, suspend, revoke, refuse to renew, refuse to grant, or any combination thereof, the individual's license or certificate or a business entity's certificate of authorization. The board may also, in its discretion, require the individual to practice under the supervision of another licensee, or require the individual to successfully complete continuing education courses as may be prescribed by the board.

(5) The board shall have jurisdiction over licensees whose licenses are not current provided the action relates to services performed when the license was current and valid.

History.

1939, ch. 231, § 20, p. 516; am. 1957, ch. 234, § 12, p. 547; am. 1963, ch. 25, § 1, p. 167; am. 1978, ch. 170, § 16, p. 371; am. 1986, ch. 140, § 18, p. 375; am. 1991, ch. 21, § 1, p. 43; am. 1993, ch. 216, § 63, p. 587; am. 1996,

ch. 357, § 16, p. 1185; am. 2000, ch. 289, § 12, p. 991; am. 2001, ch. 247, § 7, p. 889; am. 2004, ch. 84, § 4, p. 312; am. 2007, ch. 219, § 4, p. 655; am. 2008, ch. 378, § 17, p. 1040; am. 2010, ch. 111, § 5, p. 223.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 219, in subsection (2), inserted "or unless settled informally"; and in the first sentence in subsection (3), deleted "at least thirty (30) days before the date fixed for the hearing" from the end.

The 2008 amendment, by ch. 378, in subsection (1), substituted "licensee or certificate holder" for "registrant," and inserted "license or against a business entity applying for"; in subsection (3), deleted the former first sentence, which read: "The time and place for said hearing shall be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such individual registrant or business entity holding a certificate of authoriza-

tion"; in subsection (4), substituted "five thousand dollars (\$5,000)" for "two thousand dollars (\$2,000)" and "fund" for "account," inserted "license or," and deleted "of registration" following the first occurrence of "certificate"; and in subsection (5), substituted "licensees" for "registrants."

The 2010 amendment, by ch. 111, in subsection (3), substituted "Administrative proceedings" for "Hearing proceedings"; and in the first sentence in subsection (4), substituted "an administrative hearing" for "such hearing."

Effective Dates.

Section 6 of S.L. 2007, ch. 219 provided that the act should take effect on and after July 1, 2007.

JUDICIAL DECISIONS

Constitutionality.

A disciplinary order of the board of professional engineers and land surveyors triggers due process because the revocation or suspension of an engineering license deprives an engineer of his or her chosen livelihood. *H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors*, 113 Idaho 646, 747 P.2d 55 (1987).

Where there was nothing in the statutory

definitions, nor rules and regulations of the board of professional engineers and land surveyors, which warned engineers that the acts in question would subject them to discipline, the grounds upon which the engineers were disciplined by the board were unconstitutionally vague. *H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors*, 113 Idaho 646, 747 P.2d 55 (1987) (decision based on law prior to 1986 amendment).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 38.

54-1221. Reissuance of licenses and certificates. — The board, upon petition of an individual or a business entity, may reissue or reinstate a license or certificate or certificate of authorization, provided three (3) or more members of the board vote in favor of such reissuance or reinstatement. A new license or certificate or certificate of authorization, to replace any license or certificate revoked, lost, destroyed or mutilated, may be issued upon payment of such reasonable charge therefor as shall be fixed by the board to cover the estimated cost of such reissuance, but not exceeding ten dollars (\$10.00) in any case.

History.

1939, ch. 231, § 21, p. 516; am. 1957, ch. 234, § 13, p. 547; am. 1963, ch. 26, § 1, p.

168; am. 1986, ch. 140, § 19, p. 375; am. 2001, ch. 247, § 8, p. 889; am. 2008, ch. 378, § 18, p. 1041.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, in the section catchline, inserted “licenses and”; in the first sentence, substituted “a license or certificate or certificate of authorization” for “a certificate of registration or authorization”;

and in the last sentence, twice inserted “license or,” deleted “of registration” following the first occurrence of “certificate,” “subject to the rules of the board, and” following “may be issued,” and “investigation and” following “cost of.”

54-1222. Violations and penalties — Prosecution of offenses. — Any person who shall practice, or offer to practice, professional engineering or professional land surveying in this state without being licensed in accordance with the provisions of this chapter, or any person presenting or attempting to use as his own the license or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a license or certificate, or any person who shall falsely impersonate any other licensee of like or different name, or any person who shall attempt to use an expired or revoked license or practice at any time during a period the board has suspended or revoked his license, or any person who shall violate any of the provisions of this chapter, shall be guilty of a misdemeanor.

Legal counsel selected by the board, or the attorney general of this state or anyone designated by him may act as legal advisor of the board. It shall be the duty of the attorney general of this state to enforce the provisions of this chapter relating to unlicensed practice and to prosecute any unlicensed person violating the same. The attorney general shall be reimbursed by the board for any fees and expenses incurred by the attorney general in representing the board or prosecuting unlicensed persons.

History.

1939, ch. 231, § 22, p. 516; am. 1957, ch. 234, § 14, p. 547; am. 1974, ch. 13, § 111, p.

138; am. 1978, ch. 170, § 17, p. 371; am. 1986, ch. 140, § 20, p. 375; am. 2000, ch. 289, § 13, p. 991; am. 2008, ch. 378, § 19, p. 1041.

STATUTORY NOTES**Cross References.**

Punishment of misdemeanors, § 18-113.

Amendments.

The 2008 amendment, by ch. 378, throughout the first paragraph, substituted "license"

for "certificate of registration" or similar language; and in the last paragraph, inserted "relating to unlicensed practice" and "unlicensed," and added "or prosecuting unlicensed persons."

JUDICIAL DECISIONS**Recovery for Services.**

A licensed professional engineer of the state of Washington, who entered into a contract for drawing of plans for a building to be erected by defendants, residents of Idaho, but who

drew all of the plans and specifications in his office in Washington, was not barred from recovering on contract, since the services were all performed in Washington. *Johnson v. Delane*, 77 Idaho 172, 290 P.2d 213 (1955).

54-1223. Saving clause — Exemptions. — (1) This chapter shall not be construed to affect:

- (a) The practice of any other profession or trade for which a license is required under any law of this state or the United States.
 - (b) The work of an employee or a subordinate of a person holding a license under this chapter, provided such work does not include final engineering design or land surveying decisions and is done under the direct responsibility, checking, and supervision of, and verified by, a person holding a license under this chapter.
 - (c) Any individual teaching upper division engineering subjects that are classified as engineering design for any college or university in this state as of July 1, 1988, and any such individual employed after July 1, 1988, for a period of five (5) years from the date of employment with any college or university in this state.
 - (d) An individual doing surveying work for himself, or through a business entity, on property owned or leased by the individual or business entity, or in which the individual or business entity has an interest, estate or possessory right and which affects exclusively the property or interests of the individual or business entity; provided, that all land surveying maps, plats or plans filed with any county recorder's office in the state of Idaho for the purpose of illustrating or defining boundaries of property ownership, shall be made by a licensed professional land surveyor as provided in this chapter.
 - (e) An individual doing survey work for himself, or through a business entity with respect to the location, amendment, or relocation of a mining claim.
 - (f) The practice of engineering by employees of a business entity as long as the services provided by them are for internal business entity use only.
- (2) The board, at its discretion, may exempt an exceptional individual who has twelve (12) or more years of appropriate experience in engineering from the requirement for satisfactory completion of an examination in the fundamentals of engineering.
- (3) An applicant for licensure as a professional engineer either by examination or by comity who has earned a bachelor degree in engineering from an approved engineering program and has, in addition, earned a

doctorate degree in engineering from a college or university which offers an approved undergraduate program in the same discipline as the doctorate degree earned, shall be exempt from the requirement for satisfactory completion of an examination in the fundamentals of engineering. Honorary doctorate degrees are not considered earned degrees for purposes of this subsection.

(4) In addition to, and notwithstanding other provisions of this chapter, in circumstances of emergency creating conditions of imminent and substantial danger to the public health, safety or environment through the provision of engineering services, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt the provision of engineering services.

(5) A professional engineer licensed in Idaho may review the work of a professional engineer who is licensed in another jurisdiction of the United States or a foreign country on a project that is a site adaptation of a standard design plan to determine that the standard design plan meets the standard of care and is applicable to the intended circumstance, with or without modification. The Idaho professional engineer shall demonstrate responsible charge, as defined in this chapter, by performing professional services related to his assignment including developing or obtaining a complete design record with design criteria and calculations, performing necessary code research and developing any necessary and appropriate changes to the standard design plan necessary to properly apply the standard design to the intended circumstance. The nonprofessional services, such as drafting, need not be redone by the Idaho professional engineer, but must clearly and accurately reflect the Idaho professional engineer's work. The burden is on the Idaho professional engineer to show such compliance. The Idaho professional engineer shall have control of and responsibility for the entire work product, shall seal, sign and date it as required in this chapter, and shall be in possession of all original documents or certified copies of documents related to the professional engineer's work for the project.

(6) In the event a licensee in responsible charge of a project leaves employment, is transferred, is promoted, becomes incapacitated, dies or is otherwise not available to seal, sign and date final documents, the duty of responsible charge of the project shall be accomplished by the successor licensee by becoming familiar with and reviewing, in detail, and retaining the project documents to date. Subsequent work on the project must clearly and accurately reflect the successor licensee's responsible charge. The successor licensee shall seal, sign and date all work product in conformance with section 54-1215, Idaho Code.

History.

1939, ch. 231, § 23, p. 516; am. 1957, ch. 234, § 15, p. 547; am. 1970, ch. 95, § 5, p. 238; am. 1978, ch. 170, § 18, p. 371; am. 1984, ch. 254, § 5, p. 605; am. 1986, ch. 140, § 21, p. 375; am. 1990, ch. 192, § 9, p. 424; am. 1994, ch. 356, § 1, p. 1115; am. 1996, ch. 357, § 17,

p. 1185; am. 1999, ch. 273, § 2, p. 685; am. 2000, ch. 289, § 14, p. 991; am. 2001, ch. 247, § 9, p. 889; am. 2002, ch. 6, § 3, p. 6; am. 2006, ch. 137, § 1, p. 392; am. 2007, ch. 219, § 5, p. 655; am. 2008, ch. 378, § 20, p. 1042; am. 2010, ch. 111, § 6, p. 223.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 137, redesignated the subsections; substituted “five (5) years” for “three (3) years” in present subsection (1)(c); added present subsection (3); and redesignated former subsection (3) as present subsection (4).

The 2007 amendment, by ch. 219, added subsection (5).

The 2008 amendment, by ch. 378, in paragraph (1)(b), twice substituted “license” for “certificate of registration”; and in paragraph (1)(d), substituted “made by a licensed professional” for “made and certified by a registered, professional.”

The 2010 amendment, by ch. 111, added subsection (6).

Effective Dates.

Section 28 of S.L. 1986, ch. 140 read: “This act shall be in full force and effect on and after July 1, 1986, except subsection (4) of section 54-1223, Idaho Code, as enacted by this act, shall be in full force and effect on and after July 1, 1988.”

Section 2 of S.L. 1994, ch. 356 declared an emergency. Approved April 7, 1994.

Section 6 of S.L. 2007, ch. 219 provided that the act should take effect on and after July 1, 2007.

54-1224. Temporary permits. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 54-1224, as added by 1996, ch. 357, § 18, p. 1185,

was repealed by S.L. 2000, ch. 289, § 15, effective July 1, 2000.

54-1225. Appeals. — Any person or organization who shall feel aggrieved by any action of the board in denying, suspending or revoking a license or certificate or certificate of authorization, as is appropriate, may appeal therefrom in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code.

History.

1939, ch. 231, § 25, p. 516; am. 1957, ch.

234, § 16, p. 547; am. 1978, ch. 170, § 19, p. 371; am. 2008, ch. 378, § 21, p. 1043.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, substi-

tuted “revoking a license or certificate” for “revoking a certificate of registration.”

54-1226. Separability. — If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter, which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

History.

1939, ch. 231, § 26, p. 516; am. 2000, ch. 289, § 16, p. 991.

54-1227. Surveys — Authority and duties of professional land surveyors and professional engineers. — Every licensed professional land surveyor is hereby authorized to make land surveys and it shall be the duty of each licensed professional land surveyor, whenever making any such land survey that is not preliminary in nature, to set permanent and reliable

magnetically detectable monuments at all unmonumented corners field located, the minimum size of which shall be one-half (1/2) inch in least dimension and two (2) feet long iron or steel rod unless special circumstances preclude use of such monument; and such monuments must be permanently marked with the license number of the professional land surveyor responsible for placing the monument. Professional engineers qualified and duly licensed pursuant to this chapter may also perform those nonboundary surveys necessary and incidental to the work customarily performed by them.

History.

1903, p. 81, § 7; reen. R.C. & C.L., § 1408; C.S., § 2240; am. 1921, ch. 158, § 1, p. 351; I.C.A., § 53-2306; am. 1957, ch. 234, § 17, p. 547; am. 1978, ch. 170, § 20, p. 371; am. 1986,

ch. 140, § 22, p. 375; am. 1992, ch. 61, § 2, p. 192; am. 1996, ch. 357, § 19, p. 1185; am. 2008, ch. 378, § 22, p. 1043; am. 2011, ch. 136, § 11, p. 383.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, throughout the section, substituted “licensed” for “registered” or similar language; in the first sentence, inserted “magnetically detectable”; and in the last sentence, substituted “this chapter” for “title 54, Idaho Code,” and inserted “nonboundary.”

The 2011 amendment, by ch. 136, in the first sentence, deleted “relating to the sale or subdivision of lands, the retracing or establishing of property or boundary lines, public roads, streets, alleys, or trails” following “make land surveys” and inserted “that is not preliminary in nature” and “at all unmonumented corners field located.”

54-1228. Administering and certification of oaths — Authority of professional land surveyors. — Every professional land surveyor is authorized to administer and certify oaths, when it becomes necessary to take testimony to identify or establish old or lost corners, or to perpetuate a corner that is in a perishable condition, or whenever the importance of the land survey makes it desirable. A record of such oaths shall be kept as part of the field notes of the land survey.

History.

1903, p. 81, § 6; am. R.C., § 1409; reen. C.L., § 1409; C.S., § 2241; am. 1921, ch. 158, § 2, p. 351; I.C.A., § 53-2307; am. 1957, ch.

234, § 18, p. 547; am. 1978, ch. 170, § 21, p. 371; am. 1986, ch. 140, § 23, p. 375; am. 2008, ch. 378, § 23, p. 1044.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, in the first sentence, deleted “registered” following

“Every” and “and to administer oaths to assistants for the faithful performance of duty” from the end.

54-1229. Legal survey of land. — No survey of land, or plat or subdivision shall be legal unless made by or under the responsible charge of a professional land surveyor.

All land surveys made under the authority of the state, or of any political subdivision of the state, must be performed by a professional land surveyor.

History.

1903, p. 81, §§ 9, 12; reen. R.C. & C.L.,

§ 1410; C.S., § 2242; am. 1921, ch. 158, § 3, p. 351; I.C.A., § 53-2308; am. 1957, ch. 234,

§ 19, p. 547; am. 1978, ch. 170, § 22, p. 371; 357, § 20, p. 1185; am. 1998, ch. 220, § 9, p. am. 1986, ch. 140, § 24, p. 375; am. 1996, ch. 753; am. 2000, ch. 289, § 17, p. 991.

STATUTORY NOTES

Cross References.

Partition of real estate, employment of surveyor in actions for, § 6-513.

Compiler's Notes.

Section 20 of S.L. 1957, ch. 234 read: "If any section, sub-section, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not af-

fect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each remaining section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any section, sub-section, sentence, clause or phrase of this act might be declared unconstitutional."

54-1230. Public surveying — Right of entry. — Any person employed in the execution of any survey authorized by the congress of the United States may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying, and of doing any work which may be necessary to carry out the objects of then existing laws relative to surveys, and may establish permanent station marks, and erect the necessary signals and temporary observatories, doing no unnecessary injury thereby.

History.

1919, ch. 31, § 1, p. 112; C.S., § 2243; I.C.A., § 53-2309; am. 1986, ch. 140, § 25, p. 375.

54-1231. Public surveying — Assessment of damages for entry. — If the parties interested cannot agree upon the amount to be paid for damages caused thereby, either of them may petition the district court in the county in which the land is situated, which court shall appoint a time for a hearing as soon as may be, and order at least twenty (20) days' notice to be given to all parties interested, and, with or without a view of the premises, as the court may determine, hear the parties and their witnesses and assess damages.

History.

1919, ch. 31, § 2, p. 112; C.S., § 2244; I.C.A., § 53-2310.

54-1232. Public surveying — Tender of damages for entry. — The person so entering upon land may tender to the injured party damages therefor, and if, in case of petition or complaint to the court, the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs; otherwise the prevailing party shall recover costs.

History.

1919, ch. 31, § 3, p. 112; C.S., § 2245; I.C.A., § 53-2311.

54-1233. Public surveying — Costs of assessment of damages. — The costs to be allowed in all such cases shall be the same as allowed according to the rules of the court, and provisions of law relating thereto.

History.

1919, ch. 31, § 4, p. 112; C.S., § 2246; I.C.A., § 53-2312.

54-1234. Monumentation — Penalty and liability for defacing. —

If any person shall willfully deface, injure or remove any signal, monument or other object set as a permanent boundary survey marker, benchmark or point set in control surveys by agencies of the United States government or the state of Idaho by a professional land surveyor or an agent of the United States government or the state of Idaho, he shall forfeit a sum not exceeding one thousand five hundred dollars (\$1,500) for each offense, and shall be liable for damages sustained by the affected parties in consequence of such defacing, injury or removal, to be recovered in a civil action in any court of competent jurisdiction.

History.

1919, ch. 31, § 5, p. 112; C.S., § 2247; I.C.A., § 53-2313; am. 1986, ch. 140, § 26, p.

375; am. 2008, ch. 378, § 24, p. 1044; am. 2011, ch. 136, § 12, p. 383.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 378, deleted “registered” preceding “professional land surveyor.”

The 2011 amendment, by ch. 136, inserted “benchmark or point set in control surveys by

agencies of the United States government or the state of Idaho” and “or an agent of the United States government or the state of Idaho,” and substituted “one thousand five hundred dollars (\$1,500)” for “five hundred dollars (\$500).”

OPINIONS OF ATTORNEY GENERAL

Since this section creates liability only for damages that result from the willful defacing, injury or removal of a land survey monument there is no liability for the accidental or unintended destruction of a land survey monument pursuant to this section. A landowner may, of course, have other remedies pursuant to the civil and criminal laws of trespass. OAG 92-3.

Since this section places liability only on those who willfully deface, injure or remove a monument, absent an affirmative act defacing, injuring or removing the monument, project owners, contractors and other parties would not face statutory liability for their failure to exercise reasonable care in reviewing an engineer’s plans. OAG 92-3.

The board of engineers and land survey probably would not have authority to institute legal action to cause land survey monuments to be replaced where accidentally or unintentionally damaged since this section provides no civil liability where accidental or unintended injury to or destruction of a monument has occurred and even when civil liability exists for willful destruction of a monu-

ment. That remedy is available only for damages sustained by “affected parties” and it is unlikely the board would be found to be an “affected” party who has sustained damages as required by this section. Further, the board’s statutory duties primarily relate to regulation and licensing of the practice of professional engineering and professional land surveying, not protecting land survey monuments. OAG 92-3.

The conduct of an engineer who inadequately or negligently prepares and seals his plans without depicting existing land survey monuments does not amount to willful commission of an act defacing, injuring, or removing a land survey monument. OAG 92-3.

The language of this section is clear and unambiguous and would be applied literally by a reviewing court. Thus, if a design engineer or any other person acting at his direction willfully defaces, injures or removes a land survey monument, he or she will be subject to the penalties provided in this section and, if the person involved is licensed by the board of professional engineers and land surveyors as a surveyor, disciplinary action can be initiated by the board. OAG 92-3.

54-1235. Practice by a business entity. — (1) The practice of or offer

to practice professional engineering or professional land surveying, as defined in this chapter, by professional engineers or professional land surveyors, through a business entity, or by a business entity through professional engineers or professional land surveyors, as employees, or officers, is permitted subject to the provisions of this chapter, provided that all personnel of such business entity, who act in its behalf as professional engineers or professional land surveyors in this state are licensed as provided by this chapter, or are persons lawfully practicing under the exemptions enumerated in this chapter, and further provided that said business entity, except utilities regulated by the Idaho public utilities commission, has been issued a certificate of authorization by the board as provided by this chapter. No business entity shall be relieved of responsibility for the conduct or acts of its employees or officers by reason of its compliance with the provisions of this chapter, nor shall any individual practicing professional engineering or professional land surveying as defined in this chapter, be relieved of responsibility for engineering or land surveying services performed by reason of his employment or relationship with such business entity. All final drawings, specifications, plats, reports, or other engineering or land surveying papers or documents involving the practice of professional engineering or professional land surveying as defined in this chapter, which shall have been prepared or approved for the use of or for delivery to any person or for public record within this state shall be dated and bear the signature and seal of the professional engineer or professional land surveyor who prepared or approved them.

(2) A business entity organized pursuant to this section may provide or offer to provide allied professional services as defined in section 30-1303, Idaho Code, in connection with the providing of engineering or land surveying services, by persons licensed in allied professions acting as employees or officers, provided such persons are duly licensed or otherwise legally authorized to render such allied professional services within this state.

(3) A business entity desiring a certificate of authorization for engineering, for land surveying, or for both, shall file with the board a description of the engineering or land surveying service to be offered or practiced in the state, an application upon a form to be prescribed by the board and the designation required by the following paragraph, accompanied by the application fee.

(4) Such business entity shall file with the board a designation of an individual or individuals duly licensed to practice professional engineering or professional land surveying in this state who shall be in responsible charge of the practice of professional engineering or land surveying, as applicable, by said business entity in this state. In the event there shall be a change in the individual or individuals in responsible charge, such changes shall be designated in writing and filed with the board within thirty (30) days after the effective date of such change.

If all requirements of this chapter are met, the board shall issue to such business entity a certificate of authorization for professional engineering, for land surveying, or for both; provided, however, the board may refuse to

issue a certificate if any facts exist which would entitle the board to suspend or revoke an existing certificate.

A professional engineer or professional land surveyor who renders occasional, part-time or consulting engineering or land surveying services to or for a business entity may not be designated as the person in responsible charge for the professional activities of the business entity.

(5) The secretary of state shall not accept for filing from any person any assumed business name which includes within its name any of the words "engineer," "engineering," "land surveyor," "land surveying," or any modification or derivation thereof, unless the board shall have issued a letter indicating that the person has a licensed professional in responsible charge of the professional activities of the sole proprietorship or business entity. The board may notify the secretary of state, in writing, that it waives any objection to the name if the person is clearly not governed by chapter 12, title 54, Idaho Code. The secretary of state shall not accept for filing the organizational documents of an Idaho business entity, or authorize the transaction of business by any foreign business entity which includes, among objects for which it is established or within its name, any of the words "engineer," "engineering," "land surveyor," "land surveying," or any modification or derivation thereof, unless the board shall have issued for said applicant a certificate of authorization or a letter indicating the eligibility of said applicant to receive such certificate. The board may notify the secretary of state, in writing, that it waives any objection to the name or purpose of any business entity if it is clearly not governed by chapter 12, title 54, Idaho Code. The business entity applying shall include such certificate or letter from the board with any filings submitted to the secretary of state.

History.

I.C., § 54-1235, as added by 1963, ch. 20, § 1, p. 161; am. 1978, ch. 170, § 23, p. 371; am. 1979, ch. 176, § 1, p. 526; am. 1986, ch.

140, § 27, p. 375; am. 1990, ch. 192, § 10, p. 424; am. 1996, ch. 357, § 21, p. 1185; am. 2001, ch. 247, § 10, p. 889; am. 2008, ch. 378, § 25, p. 1044.

STATUTORY NOTES

Cross References.

Corporations for practice of professions, § 30-1301 et seq.

Amendments.

The 2008 amendment, by ch. 378, in the first sentence in subsection (1), substituted "licensed" for "registered"; and in the first paragraph in subsection (4), substituted "licensed" for "registered and certified."

Effective Dates.

Section 28 of S.L. 1986, ch. 140 read: "This act shall be in full force and effect on and after July 1, 1986, except subsection (4) of section 54-1223, Idaho Code, as enacted by this act, shall be in full force and effect on and after July 1, 1988."

54-1236. Exclusive jurisdiction of the state — Restriction on requirement for additional licenses or fees. — (1) Only the board of licensure of professional engineers and professional land surveyors of the state of Idaho is authorized and empowered to issue licenses to persons to practice the profession of engineering or land surveying.

(2) No local jurisdiction shall have the authority to require additional

licensure or to require payment of any fees in order for any professional engineer or professional land surveyor to engage in the practice of the profession for which the board has issued a license.

History.

I.C., § 54-1236, as added by 2004, ch. 84, § 5, p. 312; am. 2008, ch. 378, § 26, p. 1046.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, substi-

tuted "licensure" for "registration" in subsection (1).

CHAPTER 13

HEALERS IN GENERAL — EDUCATIONAL AND LICENSE REQUIREMENTS

SECTION.

54-1301 — 54-1309. [Repealed.]

54-1301 — 54-1309. Healers in general — Educational and license requirements. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections which comprised 1923, ch. 60, §§ 1, 3 to 5, p. 68; 1929, ch. 10, § 1, p. 12; 1929, ch. 27, §§ 1 to 4, p. 29; I.C.A., §§ 53-

1501 to 53-1508; 1945, ch. 92, § 1, p. 141; am. 1969, ch. 8, § 1, p. 12; am. 1982, ch. 142, §§ 2 to 5, p. 400 were repealed by S.L. 1983, ch. 33, § 1.

CHAPTER 14

NURSES

SECTION.

54-1401. Purpose — License required — Representation to the public. [Effective until July 1, 2013.]
 54-1401. Purpose — License required — Representation to the public. [Effective July 1, 2013.]
 54-1402. Definitions. [Effective until July 1, 2013.]
 54-1402. Definitions. [Effective July 1, 2013.]
 54-1403. Board of nursing. [Effective until July 1, 2013.]
 54-1403. Board of nursing. [Effective July 1, 2013.]
 54-1404. Board of nursing — Powers and duties.
 54-1405. Disposition of funds — State board of nursing account — Creation of.
 54-1406. Nursing education programs.
 54-1406A. Certified medication assistant (MA-C).

SECTION.

54-1407. License for practical nursing.
 54-1408. License for professional nursing. [Effective until July 1, 2013.]
 54-1408. License for registered nursing. [Effective July 1, 2013.]
 54-1409. License for advanced practice professional nursing. [Effective until July 1, 2013.]
 54-1409. License for advanced practice registered nursing. [Effective July 1, 2013.]
 54-1410. Nurse emeritus license. [Effective until July 1, 2013.]
 54-1410. Nurse emeritus license. [Effective July 1, 2013.]
 54-1410A. Temporary license.
 54-1411. Renewal and reinstatement of license. [Effective until July 1, 2013.]
 54-1411. Renewal and reinstatement of license. [Effective July 1, 2013.]

SECTION.
54-1412. Exceptions to license requirements.
54-1413. Disciplinary action.
54-1414. Unlawful conduct — Penalties.
54-1415. Existing licenses.

SECTION.
54-1416. Injunction.
54-1417. Advisory committee to the board.
54-1418. Nurse licensure compact.
54-1419 — 54-1426. [Repealed.]

54-1401. Purpose — License required — Representation to the public. [Effective until July 1, 2013.] — In order to safeguard the public health, safety and welfare, it is in the public interest to regulate and control nursing in the state of Idaho, to promote quality health care services, to prohibit unqualified and dishonest persons from practicing nursing, and to protect against acts or conduct which may endanger the health and safety of the public.

(1) License required. It shall be unlawful for any person to practice nursing or offer to practice nursing unless that person is duly licensed pursuant to this act.

(2) Representation to the public. Only a person who holds a valid and current license to practice professional nursing in this state or a party state pursuant to sections 54-1408 and 54-1418, Idaho Code, may use the title “nurse,” “registered nurse,” “graduate nurse” or “professional nurse” or the abbreviation “R.N.” or any other designations, titles or abbreviations to indicate that the person is practicing nursing in this state. Only a person who holds a valid and current license to practice practical nursing in this state or a party state pursuant to sections 54-1407 and 54-1418, Idaho Code, may use the title “nurse,” “licensed practical nurse,” or the abbreviation “L.P.N.” or any other designations, titles or abbreviations to indicate that the person is practicing nursing in this state.

(3) On and after July 1, 2005, all applicants for original licensure and for license reinstatement will be required to submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant for original licensure and for license reinstatement must submit a full set of the applicant’s fingerprints and any relevant fees directly to the Idaho state police and the federal bureau of investigation identification division for this purpose.

History.
I.C., § 54-1401, as added by 1977, ch. 132, § 2, p. 279; am. 2003, ch. 188, § 1, p. 510; am. 2004, ch. 268, § 1, p. 751; am. 2008, ch. 67, § 1, p. 172.

STATUTORY NOTES

Cross References.
Idaho state police, § 67-2901 et seq.
Nurses exempt from barbering law registration, § 54-504.
Nurses exempt from cosmeticians registration law, § 54-804.

Prior Laws.
Former sections 54-1401 to 54-1411, which comprised S.L. 1911, ch. 186, §§ 1 to 9, p. 614; compiled and reen. C.L. 88:4 to 88:11; C.S., §§ 2190 to 2197; am. 1921, ch. 16, § 1, p. 25;

am. 1923, ch. 123, § 1, p. 165; I.C.A., §§ 53-1601 to 53-1608; am. 1947, ch. 96, §§ 1 to 5, p. 176, were repealed by S.L. 1951, ch. 76, § 16, p. 129.

Amendments.
The 2008 amendment, by ch. 67, updated the first section reference in subsection (2) in light of 2008 legislation.

Compiler’s Notes.
For this section as effective July 1, 2013,

see the following section, also numbered § 54-1401.

The words “this act”, at the end of subsection (1), refer to S.L. 1977, ch. 132, which is compiled as §§ 54-1401 to 54-1406, 54-1407, 54-1408, and 54-1410A to 54-1415.

The Idaho central criminal history database, referred to in the first sentence in subsection (3), is the state’s central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification.

See http://www.isp.idaho.gov/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in the first sentence in subsection (3), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjisdliafis.htm>.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Nurses Prohibited from Practice of Medicine.

Persons who have proven themselves to be qualified to practice osteopathy, optometry, or

to act in the capacity of graduate registered nurses are not exempt by any expression in the acts from the operation of the medical law. *State v. Fite*, 29 Idaho 463, 159 P. 1183 (1916).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 17 et seq.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 12.

54-1401. Purpose — License required — Representation to the public. [Effective July 1, 2013.] — In order to safeguard the public health, safety and welfare, it is in the public interest to regulate and control nursing in the state of Idaho, to promote quality health care services, to prohibit unqualified and dishonest persons from practicing nursing, and to protect against acts or conduct which may endanger the health and safety of the public.

(1) License required. It shall be unlawful for any person to practice nursing or offer to practice nursing unless that person is duly licensed pursuant to this act.

(2) Representation to the public. Only a person who holds a valid and current license to practice registered nursing in this state or a party state pursuant to sections 54-1408 and 54-1418, Idaho Code, may use the title “nurse,” “registered nurse,” “graduate nurse” or “professional nurse” or the abbreviation “R.N.” or any other designations, titles or abbreviations to indicate that the person is practicing nursing in this state. Only a person who holds a valid and current license to practice practical nursing in this state or a party state pursuant to sections 54-1407 and 54-1418, Idaho Code, may use the title “nurse,” “licensed practical nurse,” or the abbreviation “L.P.N.” or any other designations, titles or abbreviations to indicate that the person is practicing nursing in this state.

(3) On and after July 1, 2005, all applicants for original licensure and for license reinstatement will be required to submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant for original licensure and for license reinstatement must submit a full set of the applicant’s fingerprints and any relevant fees directly to the Idaho state

police and the federal bureau of investigation identification division for this purpose.

History.

I.C., § 54-1401, as added by 1977, ch. 132, § 2, p. 279; am. 2003, ch. 188, § 1, p. 510; am.

2004, ch. 268, § 1, p. 751; am. 2008, ch. 67, § 1, p. 172; am. 2012, ch. 142, § 1, p. 371.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 142, substituted “license to practice registered nursing” for “license to practice professional nursing” near the beginning of subsection (2).

2013, see the preceding section, also numbered § 54-1401.

Effective Dates.

Section 9 of S.L. 2012, ch. 142 provided that the act should take effect on and after July 1, 2013.

Compiler’s Notes.

For this section as effective until July 1,

54-1402. Definitions. [Effective until July 1, 2013.] — As used in this act:

(1) “Advanced practice professional nurse” means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a nationally accredited program of study as defined herein and is authorized to perform advanced nursing practice, which may include the prescribing, administering and dispensing of therapeutic pharmacologic agents, as defined by board rules. An advanced practice professional nurse shall perform only those acts as provided herein and for which the individual is educationally prepared. Advanced practice professional nurses shall include certified nurse-midwives, clinical nurse specialists, nurse practitioners, and registered nurse anesthetists as defined in this subsection.

(a) “Certified nurse-midwife” means a licensed professional nurse who has graduated from a nationally accredited nurse-midwifery program, passed a qualifying examination recognized by the board, and has current initial certification or current recertification from a national organization recognized by the board. Certified nurse-midwives who meet these qualifying requirements and are licensed by the board, may manage women’s health care, which may include pharmacologic and nonpharmacologic therapeutic and corrective measures which focus on pregnancy, childbirth, the postpartum period, care of the newborn, reproductive and gynecological needs of well women as defined by the rules of the board. The certified nurse midwife collaborates with other health professionals in providing health care.

(b) “Clinical nurse specialist” means a licensed professional nurse who has graduated from a nationally accredited graduate program in nursing with a clinical focus, passed a qualifying examination recognized by the board, and has current initial certification or current recertification from a national group recognized by the board. Clinical nurse specialists who meet these qualifying requirements and are licensed by the board may practice as expert clinicians in a particular specialty or subspecialty of nursing practice. The clinical nurse specialist provides direct client care, which may include assessing, diagnosing, planning, and prescribing

pharmacologic and nonpharmacologic therapeutic and corrective measures, health promotion and preventive care within this specialized area of practice, as defined by rules of the board. The clinical nurse specialist collaborates with other health professionals in providing health care.

(c) "Nurse practitioner" means a licensed professional nurse who has graduated from a nationally accredited nurse practitioner program, passed a qualifying examination recognized by the board, and has current initial certification or current recertification from a national group recognized by the board. Any person authorized by the board to practice nursing as a nurse practitioner in this state as of July 1, 1998, shall be licensed as a nurse practitioner under the provisions of this act and shall be eligible for renewal of such license under the conditions and standards prescribed in this act. Nurse practitioners who meet these qualifying requirements and are licensed by the board may perform comprehensive health assessments, diagnosis, health promotion and the direct management of acute and chronic illness and disease which may include the prescribing of pharmacologic and nonpharmacologic treatments as defined by rules of the board. The nurse practitioner collaborates with other health professionals in providing health care.

(d) "Registered nurse anesthetist" means a licensed professional nurse who has graduated from a nationally accredited nurse anesthesia program, passed a qualifying examination recognized by the board and, has current initial certification or current recertification from a national group recognized by the board. Registered nurse anesthetists who meet these qualifying requirements and are licensed by the board may, in collaboration with a physician, dentist or podiatrist authorized to practice in Idaho, provide anesthesia care services as defined by the rules of the board. The scope of practice for registered nurse anesthetists shall incorporate acts identified in board rules, including selecting, ordering and administering medications appropriate for rendering anesthesia care services.

(2) "Board" means the board of nursing.

(3) "Licensed practical nurse" means a person who practices nursing by:

(a) Functioning at the direction of a licensed professional nurse, licensed physician, or licensed dentist;

(b) Contributing to the assessment of the health status of individuals and groups of individuals;

(c) Participating in the development and modification of the strategy of care;

(d) Implementing the appropriate aspects of the strategy of care as defined by the board, including administering medications and treatments as prescribed by those health care providers authorized to prescribe medication;

(e) Maintaining safe and effective nursing care rendered directly or indirectly;

(f) Participating in the evaluation of responses to interventions; and

(g) Delegating nursing interventions that may be performed by others and that do not conflict with this act.

(4) “Licensed professional nurse” means a person who practices nursing by:

- (a) Assessing the health status of individuals and groups of individuals;
- (b) Identifying health care problems that are amenable to nursing intervention;
- (c) Establishing goals to meet identified health care needs;
- (d) Planning a strategy of care;
- (e) Prescribing nursing interventions to implement the strategy of care;
- (f) Implementing the strategy of care, including administering medications and treatments as prescribed by those health care providers authorized to prescribe medication;
- (g) Authorizing nursing interventions that may be performed by others and that do not conflict with this act;
- (h) Maintaining safe and effective nursing care rendered directly or indirectly;
- (i) Evaluating responses to interventions;
- (j) Teaching the theory and practice of nursing;
- (k) Managing the practice of nursing; and
- (l) Collaborating with other health professionals in the management of health care.

(5) “Nursing education program” means a course of instruction offered and conducted to prepare persons for the practice of nursing, or to increase the knowledge and skills of the practicing nurse.

(6) “Practice of nursing” means assisting individuals or groups of individuals to promote, maintain or restore optimal health throughout the life process by assessing and evaluating their health status, planning and implementing a strategy of care to accomplish defined goals, and evaluating responses to care and treatment.

History.

I.C., § 54-1402, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 1, p. 101; am.

1991, ch. 149, § 1, p. 358; am. 1994, ch. 232, § 1, p. 723; am. 1998, ch. 118, § 1, p. 435; am. 2004, ch. 262, § 1, p. 738.

STATUTORY NOTES

Compiler’s Notes.

For this section as effective July 1, 2013, see the following section, also numbered § 54-1402.

The words “this act”, in the introductory paragraph, refer to S.L. 1977, ch. 132, which is compiled as §§ 54-1401 to 54-1406, 54-1407, 54-1408, and 54-1410A to 54-1415.

The words “this act”, in paragraphs (1)(c), (3)(g), and (4)(g), were added by S.L. 1998,

chapter 118, which is codified as §§ 54-1402 to 54-1404, 54-1407 to 54-1409, 54-1410A to 54-1415, 54-1417, and 54-1814.

Probably all references to “this act” should be to “this chapter”.

Effective Dates.

Section 2 of S.L. 1991, ch. 149 declared an emergency. Approved March 29, 1991.

OPINIONS OF ATTORNEY GENERAL

A certified registered nurse anesthetist (CRNA) is not a nurse practitioner under this section; therefore, joint promulgation of rules

governing the conduct of the CRNA is not required. OAG 87-12.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 1 et seq. assist patient while dressing or undressing. 41 A.L.R.3d 1351.

A.L.R. — Duty of physician or nurse to

54-1402. Definitions. [Effective July 1, 2013.] — As used in this act:

(1) “Advanced practice registered nurse” means a registered nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a program of study recognized or defined by the board. An advanced practice registered nurse is authorized to perform advanced nursing practice, which may include the prescribing, administering and dispensing of therapeutic pharmacologic agents, as defined by board rules. An advanced practice registered nurse shall perform only those acts as provided by the board and for which the individual is educationally prepared. Advanced practice registered nurses shall include the following four (4) roles: certified nurse- midwife; clinical nurse specialist; certified nurse practitioner; and certified registered nurse anesthetist as defined in board rule. An advanced practice registered nurse collaborates with other health professionals in providing health care.

(2) “Board” means the board of nursing.

(3) “Licensed practical nurse” means a person licensed by the board who practices nursing by:

(a) Functioning at the direction of a licensed registered nurse, licensed advanced practice registered nurse, licensed physician, or licensed dentist in a role falling within the nurse’s scope of practice as defined by the board;

(b) Contributing to the assessment of the health status of individuals and groups of individuals;

(c) Participating in the development and modification of the strategy of care;

(d) Implementing the appropriate aspects of the strategy of care as defined by the board, including administering medications and treatments as prescribed by those health care providers authorized to prescribe medication;

(e) Maintaining safe and effective nursing care rendered directly or indirectly;

(f) Participating in the evaluation of responses to interventions; and

(g) Delegating nursing interventions that may be performed by others and that do not conflict with this act.

(4) “Licensed registered nurse” means a person licensed by the board who practices nursing by:

(a) Assessing the health status of individuals and groups of individuals;

(b) Identifying health care problems that are amenable to nursing intervention;

(c) Establishing goals to meet identified health care needs;

(d) Planning a strategy of care;

(e) Prescribing nursing interventions to implement the strategy of care;

(f) Implementing the strategy of care, including administering medica-

tions and treatments as prescribed by those health care providers authorized to prescribe medication;

(g) Authorizing nursing interventions that may be performed by others and that do not conflict with this act;

(h) Maintaining safe and effective nursing care rendered directly or indirectly;

(i) Evaluating responses to interventions;

(j) Teaching the theory and practice of nursing;

(k) Managing the practice of nursing; and

(l) Collaborating with other health professionals in the management of health care.

(5) "Nursing education program" means a course of instruction offered and conducted to prepare persons for the practice of nursing, or to increase the knowledge and skills of the practicing nurse.

(6) "Practice of nursing" means assisting individuals or groups of individuals to promote, maintain or restore optimal health throughout the life process by assessing and evaluating their health status, planning and implementing a strategy of care to accomplish defined goals, and evaluating responses to care and treatment.

History.

I.C., § 54-1402, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 1, p. 101; am. 1991, ch. 149, § 1, p. 358; am. 1994, ch. 232,

§ 1, p. 723; am. 1998, ch. 118, § 1, p. 435; am. 2004, ch. 262, § 1, p. 738; am. 2012, ch. 142, § 2, p. 371.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 142, rewrote subsection (1), substituting "registered nurse" for "professional nurse" throughout and deleting paragraphs (a) through (d), which defined "certified nurse midwife," "clinical nurse specialist," "nurse practitioner," and "registered nurse anesthetist"; in subsection (3), inserted "licensed by the board" in the introductory paragraph, substituted "registered nurse" for "professional nurse," inserted "licensed advanced practice registered nurse," and added "in a role falling within the nurse's scope of

practice as defined by the board"; and, in subsection (4), substituted "registered nurse" for "professional nurse" and inserted "licensed by the board."

Compiler's Notes.

For this section as effective until July 1, 2013, see the preceding section, also numbered § 54-1402.

Effective Dates.

Section 9 of S.L. 2012, ch. 142 provided that the act should take effect on and after July 1, 2013.

54-1403. Board of nursing. [Effective until July 1, 2013.] — (1) Appointment, Removal and Term of Office. There is hereby created within the department of self-governing agencies the board of nursing for the state of Idaho composed of nine (9) members appointed by the governor. Membership of the board shall consist of the following:

(a) Five (5) persons licensed to practice professional nursing in Idaho, of whom three (3) shall be educated at the associate degree level provided that one (1) of these may be a diploma nurse, and two (2) of whom shall be educated at the baccalaureate, master's or doctoral level;

(b) Two (2) persons licensed to practice practical nursing in Idaho;

(c) One (1) person licensed as an advanced practice nurse; and

(d) One (1) person who is a lay person to health care occupations. In making appointments to the board, consideration shall be given to the board's responsibility in areas of education and practice. Persons may be reappointed to the board so long as they meet the qualifications of the position to which they were originally appointed. In the event that a member has attained an additional degree of education, they may not be reappointed to represent the board position designated for another specific degree of education. Members of the board shall hold office until expiration of the term to which the member was appointed and until his successor has been duly appointed and qualified. Upon expiration of any term or creation of any vacancy, the board shall notify the governor thereof, who then shall make such appointment or fill such vacancy within sixty (60) days. Appointments shall be for terms of four (4) years except appointments to vacancies which shall be for the unexpired term being filled. No member shall be appointed for more than three (3) consecutive terms. The governor may remove any member from the board for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

(2) **Qualifications of Members.** No person is qualified for appointment hereunder unless that person is a citizen of the United States and a resident of the state of Idaho. Members required to be licensed hereunder shall not be qualified for appointment to the board unless actively engaged in some field of nursing in Idaho at the time of appointment. No person is qualified for appointment as the lay member of the board if the person or his spouse is licensed in any health occupation; is an employee, officer or agent of or has any financial interest in any health care facility, institution, or association or any insurance company authorized to underwrite health care insurance; or is engaged in the governance and administration of any health care facility, institution or association.

(3) **Conduct of Business.** The board shall meet at such times as required to conduct the business of the board and shall annually elect from its members a chairman, vice chairman and such other officers as may be desirable. Five (5) members shall constitute a quorum and the vote of a majority of members present at a meeting wherein a quorum is present shall determine the action of the board. Each member of the board shall be compensated as provided by section 59-509(h), Idaho Code.

History.

I.C., § 54-1403, as added by 1977, ch. 132, § 2, p. 279; am. 1980, ch. 247, § 60, p. 582;

am. 1998, ch. 118, § 2, p. 435; am. 1999, ch. 310, § 1, p. 770; am. 2010, ch. 57, § 1, p. 107.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601.

Amendments.

The 2010 amendment, by ch. 57, in the last paragraph of subsection (1), deleted the former second and third sentences which read: "Members of the board of nursing and of the advisory council for licensed practical nurses

holding office under prior law on the effective date of this act shall serve as members of the board created herein until expiration of their respective terms and, as those terms expire or become vacant, the governor shall appoint such other persons as will constitute a complete board as herein prescribed. The two (2) members appointed to reach the full membership provided herein shall be persons licensed to practice professional nursing educated at

the associate degree level.”, and added the present fourth sentence.

see the following section, also numbered § 54-1403.

Compiler's Notes.

For this section as effective July 1, 2013,

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 9.

54-1403. Board of nursing. [Effective July 1, 2013.] — (1) Appointment, Removal and Term of Office. There is hereby created within the department of self-governing agencies the board of nursing for the state of Idaho composed of nine (9) members appointed by the governor. Membership of the board shall consist of the following:

- (a) Five (5) persons licensed to practice registered nursing in Idaho, of whom three (3) shall be educated at the associate degree level provided that one (1) of these may be a diploma nurse, and two (2) of whom shall be educated at the baccalaureate, master's or doctoral level;
- (b) Two (2) persons licensed to practice practical nursing in Idaho;
- (c) One (1) person licensed as an advanced practice registered nurse; and
- (d) One (1) person who is a lay person to health care occupations.

In making appointments to the board, consideration shall be given to the board's responsibility in areas of education and practice. Persons may be reappointed to the board so long as they meet the qualifications of the position to which they were originally appointed. In the event that a member has attained an additional degree of education, they may not be reappointed to represent the board position designated for another specific degree of education. Members of the board shall hold office until expiration of the term to which the member was appointed and until his successor has been duly appointed and qualified. Upon expiration of any term or creation of any vacancy, the board shall notify the governor thereof, who then shall make such appointment or fill such vacancy within sixty (60) days. Appointments shall be for terms of four (4) years except appointments to vacancies which shall be for the unexpired term being filled. No member shall be appointed for more than three (3) consecutive terms. The governor may remove any member from the board for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

(2) Qualifications of Members. No person is qualified for appointment hereunder unless that person is a citizen of the United States and a resident of the state of Idaho. Members required to be licensed hereunder shall not be qualified for appointment to the board unless actively engaged in some field of nursing in Idaho at the time of appointment. No person is qualified for appointment as the lay member of the board if the person or his spouse is licensed in any health occupation; is an employee, officer or agent of or has any financial interest in any health care facility, institution, or association or any insurance company authorized to underwrite health care insurance; or is engaged in the governance and administration of any health care facility, institution or association.

(3) **Conduct of Business.** The board shall meet at such times as required to conduct the business of the board and shall annually elect from its members a chairman, vice chairman and such other officers as may be desirable. Five (5) members shall constitute a quorum and the vote of a majority of members present at a meeting wherein a quorum is present shall determine the action of the board. Each member of the board shall be compensated as provided by section 59-509(h), Idaho Code.

History.

I.C., § 54-1403, as added by 1977, ch. 132, § 2, p. 279; am. 1980, ch. 247, § 60, p. 582;

am. 1998, ch. 118, § 2, p. 435; am. 1999, ch. 310, § 1, p. 770; am. 2010, ch. 57, § 1, p. 107; am. 2012, ch. 142, § 3, p. 371.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 142, in subsection (1), substituted “registered nurse” for “professional nurse” in paragraph (a) and substituted “advanced practice registered nurse” for “advanced practice nurse” in paragraph (b).

2013, see the preceding section, also numbered § 54-1403.

Effective Dates.

Section 9 of S.L. 2012, ch. 142 provided that the act should take effect on and after July 1, 2013.

Compiler's Notes.

For this section as effective until July 1,

54-1404. Board of nursing — Powers and duties. — The board shall have all powers and duties necessary and incident to regulation of nursing and to enforcement of this chapter including, but not limited to, the power and duty:

- (1) To regulate individuals designated as certified medication assistants.
- (2) To license qualified persons for practice of nursing in Idaho; to renew licenses; to limit, restrict, amend, deny, suspend or revoke licenses; and to accept the voluntary surrender of a license;
- (3) To establish alternatives to formal disciplinary action including a practice remediation program to educate and remediate nurses as a result of nursing practice deficiencies;
- (4) To establish standards, criteria, conditions and requirements for licensure and to investigate and determine eligibility and qualifications for licensure, and to administer examinations for licensure;
- (5) To establish standards of conduct and practice and to regulate the use of titles, abbreviations and designations for the practice of nursing;
- (6) To establish standards, criteria, and requirements for curricula for nursing education programs and to evaluate, survey, review and approve nursing education programs subject to the provisions of section 54-1406, Idaho Code;
- (7) To evaluate continuing competency of persons licensed pursuant to this chapter and to develop standards which will advance the competency of licensees in accordance with developing scientific understanding and methods relating to the practice of nursing;
- (8) To receive and collect license and renewal fees assessed pursuant to this chapter and to assess, receive and collect additional reasonable fees for the administration of examinations, investigations and evaluations of

applicants, issuance of temporary licenses, duplication and verification of records, surveying and evaluating nursing education programs, and administrative fines not to exceed one hundred dollars (\$100) for each count or separate offense of practicing nursing without current licensure, to be deposited in the state board of nursing account in the manner provided by this chapter;

(9) To employ personnel necessary to administer this chapter and rules promulgated pursuant to this chapter and perform such other duties as the board may require. Such personnel shall include an executive director, who shall be currently licensed to practice professional nursing in Idaho and who shall not be a member of the board;

(10) To maintain a record of board proceedings, annually report to the governor and maintain a public register of names and addresses of licensed nurses;

(11) To enter into interstate compacts, contracts or agreements to facilitate the practice and regulation of nursing in this state;

[(12)](11) To evaluate and develop, or to enter into contracts or agreements with others to evaluate and develop, the education, distribution and availability of the nursing workforce for the purpose of improving the delivery of quality health care;

[(13)](12) To make, adopt and publish rules pursuant to chapter 52, title 67, Idaho Code, as may be necessary or appropriate to carry out the provisions and purposes of this chapter.

History.

I.C., § 54-1404, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 2, p. 101; am. 1995, ch. 351, § 1, p. 1163; am. 1998, ch. 118,

§ 3, p. 435; am. 2001, ch. 76, § 1, p. 184; am. 2007, ch. 139, § 1, p. 402; am. 2012, ch. 139, § 1, p. 366; am. 2012, ch. 140, § 1, p. 367.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 139, substituted “chapter” for “act” throughout the section; and added subsection (1) and redesignated the subsequent subsections accordingly.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 139, added subsection (3) and renumbered the subsequent subsections accordingly.

The 2012 amendment, by ch. 140, added subsection (11) [now (12)] and renumbered former subsection (11) as (12) [now (13)].

54-1405. Disposition of funds — State board of nursing account — Creation of. — All fees of any kind collected under the provisions of this act shall be deposited in the state treasury to the credit of an account to be known as the state board of nursing account in accordance with chapter 8, title 57, Idaho Code, which is hereby created and all such monies as are now in or may hereafter come into such account are hereby appropriated for carrying out the purposes and objectives of this act and to pay all costs and expenses incurred in connection therewith.

Such monies shall be paid out upon warrants drawn by the state controller upon presentation of proper vouchers approved by the state board of nursing.

History.

I.C., § 54-1405, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 3, p. 101; am. 1994, ch. 180, § 98, p. 420.

STATUTORY NOTES**Cross References.**

State controller, § 67-1001 et seq.

Compiler's Notes.

The words "this act," near the end of the first paragraph, refer to S.L. 1977, ch. 132, which is compiled as §§ 54-1401 to 54-1406, 54-1407, 54-1408, and 54-1410A to 54-1415.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 98 of S.L. 1994, ch. 180 became effective January 2, 1995.

54-1406. Nursing education programs. — Approval.

(a) **Qualifications.** Persons and institutions desiring to offer or conduct approved nursing education programs in the state of Idaho shall comply herewith. Approval shall be conditioned upon and subject to continuing compliance with standards adopted by the board respecting faculty, staff, curriculum, administration, financial stability and other matters affecting the quality of nursing education. However, any curriculum or rule change considered by the board which may alter existing articulation agreements between educational institutions, or existing nursing programs of the eleven (11) month LPN, the two (2) year associate degree/RN, or the four (4) year baccalaureate degree must be approved by the state board of education prior to implementation.

(b) **Initial compliance.** Upon receipt of an application hereunder, a survey of the program, including clinical facilities and affiliated institutions, shall be made under the direction of the executive director and a written report of the findings shall be submitted to the board. If the board determines that the standards have been met, it shall issue a certificate of approval.

(c) **Continuing compliance.** To insure the continuing compliance with adopted standards, all approved nursing education programs shall be surveyed and reviewed periodically under the direction of the executive director. Written reports of the findings shall be submitted to the board. In the event any program fails to maintain compliance required by this section, the board may withdraw its prior certification, or impose such conditions and restrictions as may secure compliance within a reasonable period of time by notification in writing and specifying the reasons for the action. Action against any existing program must be based upon fact and subject to appeal as provided for administrative action pursuant to chapter 52, title 67, Idaho Code.

History.

I.C., § 54-1406, as added by 1977, ch. 132, § 2, p. 279; am. 1995, ch. 351, § 2, p. 1163.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.

54-1406A. Certified medication assistant (MA-C). — (1) Effective July 1, 2008, an individual registered as a nursing assistant, without substantiated charges, on the nursing assistant registry currently maintained by the Idaho department of health and welfare, may, with additional education and training as set forth in rule as established by the board, become a certified medication assistant (MA-C) permitted to administer medications as prescribed by an authorized provider within the parameters set forth in rule. A licensed nurse shall supervise the certified medication assistant.

(2) The board shall adopt rules regarding the certification of certified medication assistants, including rules applicable to education, training and other qualifications for certification that will ensure that the certified medication assistant is competent to perform safely within the range of authorized functions.

(3) The board shall maintain a public registry of the names and addresses of all certified medication assistants.

(4) The board is authorized to impose and collect initial application and two (2) year renewal fees, as well as reinstatement fees, not to exceed one hundred dollars (\$100), as determined by board rule. Fees collected pursuant to this section shall be deposited in the state board of nursing account for the administration of examinations, evaluations and investigations of applicants, issuance of certifications, evaluation of education and training programs, duplication and verification of records, and other administrative expenses.

(5) The board shall adopt by rule an application process.

(a) The application process shall include conducting a state and federal criminal background check on all applicants seeking certification pursuant to this section.

(b) All applicants for original certification or for certification reinstatement shall submit to a fingerprint-based criminal history check of both the Idaho central criminal database and the federal bureau of investigation criminal history database. All such applicants shall submit a full set of their fingerprints and any relevant fees directly to the Idaho board of nursing for forwarding to the appropriate law enforcement agency for processing. Criminal background reports received by the board from the Idaho state police and the federal bureau of investigation shall be used only for licensing decisions and handled and disposed of in a manner consistent with requirements imposed by the Idaho state police and the federal bureau of investigation.

(c) Upon meeting all requirements and upon the successful completion of additional education, training and competency assessment prescribed by rule, an applicant shall be certified as a certified medication assistant (MA-C).

(6) A person may not use the title “certified medication assistant” or the

abbreviation "MA-C" unless such person has been duly certified pursuant to this section.

(7) The board shall adopt rules governing the approval of education and training programs for certified medication assistants.

(8) The board shall set forth in rule criteria for acceptable certified medication assistant competency evaluations.

(9)(a) For any one (1) or a combination of grounds for discipline as set forth in paragraph (b) of this subsection, the board shall have the authority to:

(i) File a letter of concern if the board believes there is insufficient evidence to support direct action against a certified medication assistant;

(ii) Deny certification or recertification, suspend, revoke, place on probation, reprimand, limit, restrict, condition or accept the voluntary surrender of a certificate issued pursuant to this section if a certified medication assistant commits an act that constitutes grounds for discipline;

(iii) Refer criminal violations of this section to the appropriate law enforcement agency;

(iv) Impose a civil penalty of not more than one hundred dollars (\$100) per violation; and

(v) Recover costs of investigation and disciplinary proceedings, including attorney's fees.

(b) Grounds for discipline shall include:

(i) Substance abuse or dependency;

(ii) Client abandonment, neglect or abuse;

(iii) Fraud or deceit, which may include, but is not limited to:

(A) Filing false credentials;

(B) Falsely representing facts on an application for initial certification, renewal or reinstatement; and

(C) Giving or receiving assistance in taking the competency evaluation;

(iv) Boundary violations;

(v) Performance of unsafe client care;

(vi) Performing acts beyond the range of authorized functions or beyond those tasks delegated under the provisions of this section;

(vii) Misappropriation or misuse of property;

(viii) Obtaining money or property of a client, resident or other person by theft, fraud, misrepresentation or duress committed during the course of employment as a certified medication assistant;

(ix) Criminal conviction of a misdemeanor that directly relates to or affects the functions of a certified medication assistant or conviction of any felony as set forth in rule;

(x) Failure to conform to the standards of a certified medication assistant;

(xi) Putting clients at risk of harm; and

(xii) Violating the privacy or failing to maintain the confidentiality of client or resident information.

(10) The board shall comply with the provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, in taking any disciplinary action against a certified medication assistant and shall maintain records of any such disciplinary action, which records shall be available for public inspection to the same extent as records regarding disciplinary proceedings against nurses and as otherwise consistent with chapter 3, title 9, Idaho Code.

(11) The board shall notify the Idaho nursing assistant registry of any disciplinary action taken against a certified medication assistant pursuant to this section.

History.

I.C., § 54-1406A, as added by 2007, ch. 139, § 2, p. 402; am. 2012, ch. 141, § 1, p. 369.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 141, in subsection (5) divided the existing provisions into the introductory paragraph and paragraphs (a) and (c) and added paragraph (b).

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

54-1407. License for practical nursing. — (1) Qualifications. To qualify for a license to practice practical nursing a person must:

(a) Have successfully completed the basic curriculum of an approved practical nursing education program or its equivalent; and

(b) Satisfy one (1) of the following requirements:

(i) Pass an examination adopted and used by the board to measure knowledge and judgment essential for the safe practice of practical nursing; or

(ii) Have a practical nursing license in good standing, without restriction or limitation, issued upon successful similar examination, approved by the board, conducted in another state, territory or foreign country; or

(iii) Have a practical nursing license in good standing, without restriction or limitation, issued by another state, territory or foreign country and meet established board requirements; and

(c) Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(2) Fees. A qualified applicant shall be entitled to a license to practice practical nursing upon payment of a license fee to the board in an amount designated by the board not to exceed one hundred fifty dollars (\$150).

History.

I.C., § 54-1408, as added by 1977, ch. 132, § 2, p. 279; am. 1995, ch. 351, § 3, p. 1163;

am. and redesign. 1998, ch. 118, § 5, p. 435; am. 2002, ch. 80, § 1, p. 178; am. 2009, ch. 67, § 1, p. 190.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 67, in subsection

(1)(a), deleted "eleven (11) month" preceding "practical nursing education program";

added the introductory language in subsection (1)(b); and added the (1)(b)(i) and (1)(b)(ii) subsection designations and added subsection (1)(b)(iii).

Compiler's Notes.

This section was formerly compiled as § 54-1408.

Former § 54-1407 was amended and redesignated as § 54-1408 by § 4 of S.L. 1998, ch. 118.

Effective Dates.

Section 4 of S.L. 1995, ch. 351, declared an emergency. Approved March 22, 1995.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

54-1408. License for professional nursing. [Effective until July 1, 2013.] — (1) Qualifications. To qualify for a license to practice professional nursing, a person must:

(a) Have successfully completed the basic curriculum of an approved professional nursing education program or its equivalent; and

(b) Satisfy one (1) of the following requirements:

(i) Pass an examination adopted and used by the board to measure knowledge and judgment essential for the safe practice of professional nursing; or

(ii) Have a professional or registered nurse license in good standing, without restriction or limitation, issued upon successful similar examination, approved by the board, conducted in another state, territory or foreign country; or

(iii) Have a professional or registered nurse license in good standing, without restriction or limitation, issued by another state, territory or foreign country and meet established board requirements; and

(c) Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(2) Fees. A qualified applicant shall be entitled to a license to practice professional nursing upon payment of a license fee to the board in an amount designated by the board not to exceed two hundred dollars (\$200).

History.

I.C., § 54-1407, as added by 1977, ch. 132, § 2, p. 279; am. and redesign. 1998, ch. 118,

§ 4, p. 435; am. 2002, ch. 80, § 2, p. 178; am. 2009, ch. 67, § 2, p. 190.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 67, in subsection (1)(a), inserted "or its equivalent"; added the introductory language in subsection (1)(b); and added the (1)(b)(i) and (1)(b)(ii) subsection designations and added subsection (1)(b)(iii).

see the following section, also numbered § 54-1408.

This section was formerly compiled as § 54-1407.

Former § 54-1408 was amended and redesignated as § 54-1407 by § 5 of S.L. 1998, ch. 118.

Compiler's Notes.

For this section as effective July 1, 2013,

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

54-1408. License for registered nursing. [Effective July 1, 2013.]

— (1) Qualifications. To qualify for a license to practice registered nursing, a person must:

- (a) Have successfully completed the basic curriculum of an approved registered nursing education program or its equivalent; and
- (b) Satisfy one (1) of the following requirements:
 - (i) Pass an examination adopted and used by the board to measure knowledge and judgment essential for the safe practice of registered nursing; or
 - (ii) Have a professional or registered nurse license in good standing, without restriction or limitation, issued upon successful similar examination, approved by the board, conducted in another state, territory or foreign country; or
 - (iii) Have a professional or registered nurse license in good standing, without restriction or limitation, issued by another state, territory or foreign country and meet established board requirements; and
- (c) Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(2) Fees. A qualified applicant shall be entitled to a license to practice registered nursing upon payment of a license fee to the board in an amount designated by the board not to exceed two hundred dollars (\$200).

History. § 4, p. 435; am. 2002, ch. 80, § 2, p. 178; am. I.C., § 54-1407, as added by 1977, ch. 132, 2009, ch. 67, § 2, p. 190; am. 2012, ch. 142, § 2, p. 279; am. and redesign. 1998, ch. 118, § 4, p. 371.

STATUTORY NOTES

Amendments. 2013, see the preceding section, also numbered § 54-1408.
 The 2012 amendment, by ch. 142, substituted “registered nursing” for “professional nursing” in the section heading and throughout the text.

Compiler’s Notes. Section 9 of S.L. 2012, ch. 142 provided that the act should take effect on and after July 1, 2013.
 For this section as effective until July 1,

54-1409. License for advanced practice professional nursing. [Effective until July 1, 2013.]

— (1) Qualifications. To qualify for a license to practice advanced practice professional nursing, a person must:

- (a) Be currently licensed as a professional nurse in Idaho; and
- (b) Have successfully completed an approved advanced practice professional nursing education program that meets the board requirements for the category of advanced nursing practice for which the applicant is seeking licensure; and
- (c) Have passed a qualifying examination recognized by the board and

have current initial certification or current recertification from a national group recognized by the board; and

(d) Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(2) Fees. A qualified applicant shall be entitled to a license to practice advanced practice professional nursing upon payment of a license fee to the board in an amount designated by the board not to exceed two hundred fifty dollars (\$250).

History.

I.C., § 54-1409, as added by 1998, ch. 118, § 6, p. 435; am. 2002, ch. 80, § 3, p. 178.

STATUTORY NOTES

Compiler's Notes.

For this section as effective July 1, 2013, see the following section, also numbered § 54-1409.

Former § 54-1409 was amended and redesignated as § 54-1410 by § 7 of S.L. 1998, ch. 118 and then amended and redesignated as § 54-1410A by S.L. 2002, ch. 80, § 4.

54-1409. License for advanced practice registered nursing. [Effective July 1, 2013.] — (1) Qualifications. To qualify for a license to practice advanced practice registered nursing, a person must:

(a) Be currently licensed to practice as a registered nurse in Idaho; and
(b) Have successfully completed an approved advanced practice registered nursing education program that meets the board requirements for the role of advanced nursing practice for which the applicant is seeking licensure; and

(c) Have passed a qualifying examination recognized by the board and have current certification from a national organization recognized by the board; and

(d) Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(2) Fees. A qualified applicant shall be entitled to a license to practice advanced practice registered nursing upon payment of a license fee to the board in an amount designated by the board not to exceed two hundred fifty dollars (\$250).

History.

I.C., § 54-1409, as added by 1998, ch. 118,

§ 6, p. 435; am. 2002, ch. 80, § 3, p. 178; am. 2012, ch. 142, § 5, p. 371.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 142, substituted "registered nursing" for "professional nursing" in the section heading and throughout the text; in subsection (1), substituted "licensed to practice as a registered nurse" for "licensed as a professional nurse" in paragraph (1)(a), substituted "role" for "category" in paragraph (1)(b), and substituted "have current certification from a nation organization" for "have current initial certification or

current recertification from a national group" in paragraph (1)(c).

Compiler's Notes.

For this section as effective until July 1, 2013, see the preceding section, also numbered § 54-1409.

Effective Dates.

Section 9 of S.L. 2012, ch. 142 provided that the act should take effect on and after July 1, 2013.

54-1410. Nurse emeritus license. [Effective until July 1, 2013.] —

(1) Any licensee in good standing, who desires to retire for any length of time from the practice of nursing in this state, shall submit a request in writing, surrender the current license, and pay the required fee; thereafter the current license shall be placed on inactive status and an emeritus status license issued.

(2) An emeritus status license shall be renewed biennially following submission of a renewal application and fee.

(3) Fees are nonrefundable and cannot be prorated.

(4) An emeritus status license does not entitle the holder to practice nursing in the state of Idaho, except that:

(a) A registered nurse with an emeritus status license may use the title “registered nurse,” or the abbreviation “RN”; and

(b) A practical nurse with an emeritus status license may use the title “licensed practical nurse,” or the abbreviation “LPN”; and

(c) An advanced practice professional nurse with an emeritus status license may use an appropriate title or designation as set forth in section 54-1402(1), Idaho Code.

(5) The board may reinstate a license with emeritus status to a license with active status upon payment of the required reinstatement fee, submission of a satisfactory reinstatement application and proof of current competency to practice.

(6) If the emeritus status license is allowed to lapse, the licensee shall not hold himself out by the designation “RN” or “LPN,” or by any other title or designation.

(7) When disciplinary proceedings have been initiated against a licensee with emeritus status, the license shall not be reinstated until the proceedings have been completed.

History.

I.C., § 54-1410, as added by 2002, ch. 80,
§ 5, p. 178.

STATUTORY NOTES**Compiler's Notes.**

For this section as effective July 1, 2013, see the following section, also numbered § 54-1410.

Former § 54-1410, as enacted by S.L. 1977, ch. 132, § 2, was redesignated as § 54-1411 by § 8 of S.L. 1998, ch. 118.

Former § 54-1410, enacted as § 54-1409 by S.L. 1977, ch. 172, § 2, and redesignated as § 54-1410 by S.L. 1998, ch. 118, § 7, was redesignated as § 54-5410A by S.L. 2002, ch. 80, § 4.

54-1410. Nurse emeritus license. [Effective July 1, 2013.] —

(1) Any licensee in good standing, who desires to retire for any length of time from the practice of nursing in this state, shall submit a request in writing, surrender the current license, and pay the required fee; thereafter the current license shall be placed on inactive status and an emeritus status license issued.

(2) An emeritus status license shall be renewed biennially following submission of a renewal application and fee.

(3) Fees are nonrefundable and cannot be prorated.

(4) An emeritus status license does not entitle the holder to practice nursing in the state of Idaho, except that:

(a) A registered nurse with an emeritus status license may use the title "registered nurse," or the abbreviation "RN"; and

(b) A practical nurse with an emeritus status license may use the title "licensed practical nurse," or the abbreviation "LPN"; and

(c) An advanced practice registered nurse with an emeritus status license may use an appropriate title or designation as set forth in section 54-1402(1), Idaho Code.

(5) The board may reinstate a license with emeritus status to a license with active status upon payment of the required reinstatement fee, submission of a satisfactory reinstatement application and proof of current competency to practice.

(6) If the emeritus status license is allowed to lapse, the licensee shall not hold himself out by the designation "RN" or "LPN," or by any other title or designation.

(7) When disciplinary proceedings have been initiated against a licensee with emeritus status, the license shall not be reinstated until the proceedings have been completed.

History.

I.C., § 54-1410, as added by 2002, ch. 80, § 5, p. 178; am. 2012, ch. 142, § 6, p. 371.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 142, substituted "advanced practice registered nurse" for "advanced practice professional nurse" in paragraph (4)(c).

Compiler's Notes.

For this section as effective until July 1,

2013, see the preceding section, also numbered § 54-1410.

Effective Dates.

Section 9 of S.L. 2012, ch. 142 provided that the act should take effect on and after July 1, 2013.

54-1410A. Temporary license. — (1) The board may issue temporary licenses to:

(a) Graduates of approved nursing education programs seeking to qualify for licensure by this chapter; or

(b) Persons who have not actively engaged in the practice of nursing in any state for more than three (3) years immediately prior to application for licensure.

(2) Temporary licenses shall be issued upon such terms and conditions as the board may determine necessary to insure safe and qualified performance of nursing functions. The board shall define the nature, the scope and period of practice permissible under the temporary license.

History.

I.C., § 54-1409, as added by 1977, ch. 132, § 2, p. 279; am. and redesign. 1998, ch. 118,

§ 7 p. 435; am. and redesign. 2002, ch. 80, § 4, p. 178.

STATUTORY NOTES

Compiler's Notes.

This section was originally compiled as § 54-1409. It was redesignated as § 54-1410

by S.L. 1998, ch. 118, § 7. This section was then redesignated as § 54-1410A by S.L. 2002, ch. 80, § 4.

54-1411. Renewal and reinstatement of license. [Effective until July 1, 2013.] — (1) Renewal. Each license issued pursuant to this chapter shall be valid from the date of its issue until the first renewal date thereafter.

(a) No license shall be valid unless renewed each and every two (2) years on the renewal dates fixed by the board.

(b) The board may impose a renewal fee in an amount not to exceed one hundred dollars (\$100).

(c) A license that is not timely renewed is a lapsed license.

(2) Certified nurse midwives, clinical nurse specialists and nurse practitioners desiring license renewal must provide proof, satisfactory to the board, of the applicant's competence to practice by documenting completion of a peer review process.

(3) Reinstatement. A person whose license has lapsed, or who holds an emeritus status license in good standing, or whose license has been revoked, suspended, limited, conditioned or otherwise sanctioned by the board, may apply for reinstatement of the license to active and unrestricted status. A licensee's ability to apply for reinstatement may be subject to time constraints imposed by board rule or by the terms of a disciplinary order. An applicant for reinstatement must:

(a) Pay a reinstatement fee in an amount not to exceed one hundred dollars (\$100).

(b) Submit a completed reinstatement application and provide proof, satisfactory to the board, of the applicant's competency to practice.

(c) Document compliance with the terms and conditions set forth in any order of the board as a condition of reinstatement.

History.

I.C., § 54-1410, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 4, p. 101; am.

and redesign. 1998, ch. 118, § 8, p. 435; am. 2002, ch. 80, § 6, p. 178; am. 2004, ch. 262, § 2, p. 738.

STATUTORY NOTES

Compiler's Notes.

For this section as effective July 1, 2013, see the following section, also numbered § 54-1411.

This section was formerly compiled as § 54-1410.

Former § 54-1411 was amended and redesignated as § 54-1412 by § 9 of S.L. 1998, ch. 118.

54-1411. Renewal and reinstatement of license. [Effective July 1, 2013.] — (1) Renewal. Each license issued pursuant to this chapter shall be valid from the date of its issue until the first renewal date thereafter.

(a) No license shall be valid unless renewed each and every two (2) years on the renewal dates fixed by the board.

(b) The board may impose a renewal fee in an amount not to exceed one hundred dollars (\$100).

(c) A license that is not timely renewed is a lapsed license.

(2) Certified nurse-midwives, clinical nurse specialists, certified registered nurse anesthetists and certified nurse practitioners desiring license renewal must provide proof, satisfactory to the board, of the applicant's competence to practice by documenting completion of a peer review process.

(3) Reinstatement. A person whose license has lapsed, or who holds an emeritus status license in good standing, or whose license has been revoked, suspended, limited, conditioned or otherwise sanctioned by the board, may apply for reinstatement of the license to active and unrestricted status. A licensee's ability to apply for reinstatement may be subject to time constraints imposed by board rule or by the terms of a disciplinary order. An applicant for reinstatement must:

(a) Pay a reinstatement fee in an amount not to exceed one hundred dollars (\$100).

(b) Submit a completed reinstatement application and provide proof, satisfactory to the board, of the applicant's competency to practice.

(c) Document compliance with the terms and conditions set forth in any order of the board as a condition of reinstatement.

History.

I.C., § 54-1410, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 4, p. 101; am.

and redesign. 1998, ch. 118, § 8, p. 435; am. 2002, ch. 80, § 6, p. 178; am. 2004, ch. 262, § 2, p. 738; am. 2012, ch. 142, § 7, p. 371.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 142, substituted "Certified nurse-midwives, clinical nurse specialists, certified registered nurse anesthetists and certified nurse practitioners" for "Certified nurse midwives, clinical nurse specialists and nurse practitioners" in subsection (2).

2013, see the preceding section, also numbered § 54-1411.

Effective Dates.

Section 9 of S.L. 2012, ch. 142 provided that the act should take effect on and after July 1, 2013.

Compiler's Notes.

For this section as effective until July 1,

54-1412. Exceptions to license requirements. — This act shall not be construed to require licensure or to prohibit the practice of nursing by persons assisting in an emergency, students enrolled in approved nursing education programs performing functions incident to formal instruction, nurses licensed by another state, territory or country and employed by the United States government performing official duties, persons rendering nursing services or care of the sick when done in connection with the practice of the religious tenets of any church by adherents thereof, and by such other persons as may be exempt from licensure by rules of the board. Nothing shall be construed as prohibiting the use of medical attendants by the department of correction at its correctional institutions.

History.

I.C., § 54-1411, as added by 1977, ch. 132,

§ 2, p. 279; am. and redesign. 1998, ch. 118,
§ 9, p. 435.

STATUTORY NOTES**Prior Laws.**

Former sections 54-1412 — 54-1415 which comprised 1951, ch. 76, §§ 1-4, p. 129; 1963, ch. 77, § 1, p. 272; 1965, ch. 92, §§ 1-3, p. 153; 1971, ch. 17, § 1, p. 30; 1971, ch. 85, § 1, p. 187; 1974, ch. 13, §§ 112-114, p. 138 were repealed by S.L. 1977, ch. 132, § 1.

Former § 54-1412 was amended and redesignated as § 54-1413 by § 10 of S.L. 1998, ch. 118.

The words "this act," at the beginning of this section, refer to S.L. 1977, ch. 132, which is compiled as §§ 54-1401 to 54-1406, 54-1407, 54-1408, and 54-1410A to 54-1415.

Compiler's Notes.

This section was formerly compiled as § 54-1411.

54-1413. Disciplinary action. — (1) Grounds for discipline. The board shall have the power to refuse to issue, renew or reinstate a license issued pursuant to this chapter, and may revoke, suspend, place on probation, reprimand, limit, restrict, condition or take other disciplinary action against the licensee as it deems proper, including assessment of the costs of investigation and discipline against the licensee, upon a determination by the board that the licensee engaged in conduct constituting any one (1) of the following grounds:

- (a) Made, or caused to be made, a false, fraudulent or forged statement or representation in procuring or attempting to procure a license to practice nursing;
 - (b) Practiced nursing under a false or assumed name;
 - (c) Is convicted of a felony or of any offense involving moral turpitude;
 - (d) Is or has been grossly negligent or reckless in performing nursing functions;
 - (e) Habitually uses alcoholic beverages or drugs as defined by rule;
 - (f) Is physically or mentally unfit to practice nursing;
 - (g) Violates the provisions of this chapter or rules and standards of conduct and practice as may be adopted by the board;
 - (h) Otherwise engages in conduct of a character likely to deceive, defraud or endanger patients or the public, which includes, but is not limited to, failing or refusing to report criminal conduct or other conduct by a licensee that endangers patients;
 - (i) Has had a license to practice nursing suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation; or
 - (j) Failure to comply with the terms of any board order, negotiated settlement or probationary agreement of the board, or to pay fines or costs assessed in a prior disciplinary proceeding.
- (2) Separate offense. Each day an individual violates any of the provisions of this chapter or rules and standards of conduct and practice as may be adopted by the board shall constitute a separate offense.
- (3) Proceedings.
- (a) The executive director shall conduct such investigations and initiate such proceedings as necessary to ensure compliance with this section. The

board may accept the voluntary surrender of a license from any nurse under investigation and accordingly enter an order revoking or suspending such license and/or imposing such conditions, limitations, or restrictions on the practice of any such nurse as may be appropriate in the discretion of the board. Otherwise, every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice. All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code.

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence. The board and any person duly appointed by the board to conduct hearings shall have all powers as are necessary and incident to orderly and effective receipt of evidence including, but not limited to, the power to administer oaths, and to compel by subpoena attendance of witnesses and production of books, records and things at the hearing or at a deposition taken by a party in accordance with the Idaho rules of civil procedure. Any party shall be entitled to the use of subpoena upon application therefor.

(c) In the event any person fails to comply with a subpoena personally served upon him or refuses to testify to any matter regarding which he may be lawfully interrogated, the board shall petition the district court in the county where such failure or refusal occurred or where such person resides, to enforce such subpoena or compel such testimony. Proceedings before the district court shall be for contempt in the same nature as contempt of court for failure or refusal to comply with an order of the court and the court shall have the same powers to secure compliance with subpoena and testimony or to impose penalties as in contempt of court proceedings.

(4) Probation/Subsequent review. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor and/or supervise the practice of nursing by the licensee subject to such order for the prescribed probationary period. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice nursing and that he is not likely to violate this chapter or rules adopted hereunder in the future. The board may, as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs incurred by the board in proceedings upon which the order was entered.

(5) Reporting investigative information. Nothing in section 9-340C(8) and (9), Idaho Code, shall be construed as limiting the authority of the board to report current significant investigative information to the coordinated licensure information system for transmission to states that are parties to any multistate agreements or compacts regarding nurse licensure.

History.

I.C., § 54-1412, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 5, p. 101; am.

and redesign. 1998, ch. 118, § 10, p. 435; am. 2001, ch. 76, § 2, p. 184; am. 2002, ch. 80, § 7, p. 178; am. 2008, ch. 67, § 2, p. 173.

STATUTORY NOTES

Prior Laws.

Another former § 54-1413 was repealed. See Prior Laws, § 54-1412.

Amendments.

The 2008 amendment, by ch. 67, in paragraph (1)(e), substituted “or drugs as defined by rule” for “or narcotic, hypnotic or hallucinogenic drugs”; and added paragraph (1)(j).

Compiler's Notes.

This section was formerly compiled as § 54-1412.

Former § 54-1413 was amended and redesignated as § 54-1414 by § 11 of S.L. 1998, ch. 118.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Power of board.
Unprofessional conduct.

Power of Board.

The hearing officer — not the board — makes the initial decision as to guilt or innocence, and the board's only function is to approve or disapprove a guilty decision and impose the penalty; furthermore it is powerless to enter a decision of its own and specifically cannot find the charges proved if the hearing officer has held otherwise. *Tuma v. Board of Nursing*, 100 Idaho 74, 593 P.2d 711 (1979).

Unprofessional Conduct.

Given no written guidelines as to what conduct might possibly result in a suspension of her license for unprofessionalism, a nurse very well may have surmised that she was on

thin ice with the particular doctor, or the medical profession in general, in suggesting to a patient alternate procedures for the treatment of cancer, but she could not know, having not ever been forewarned against so doing. *Tuma v. Board of Nursing*, 100 Idaho 74, 593 P.2d 711 (1979).

There is nothing in the statutory definition of “unprofessional conduct” which can be said to have adequately warned a nurse of the possibility that her license would be suspended if she engaged in conversations with a patient regarding alternative procedures; hence, the statute, unaided by board rules and regulations, did not prohibit the conduct with which she was charged. *Tuma v. Board of Nursing*, 100 Idaho 74, 593 P.2d 711 (1979).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 88.

A.L.R. — Liability for negligence in diagnosing or treating aspirin poisoning. 36 A.L.R.3d 1358.

Liability for injury allegedly resulting from negligence in making hypodermic injection. 45 A.L.R.3d 731.

Revocation of nurse's license to practice profession. 55 A.L.R.3d 1141.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as grounds for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Medical malpractice: who are “health care providers,” or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

54-1414. Unlawful conduct — Penalties. — (1) It shall be unlawful for any person, corporation, association or other legal entity to:

- (a) Practice nursing in this state without a current license unless exempted from licensure by this chapter; or
- (b) Falsify or forge any application for licensure, license, renewal of license or certification required by this chapter; or
- (c) Falsely represent by use of any designation, title, or statement, that he is licensed pursuant to this chapter; or

(d) Falsely represent, by use of any designation, title or statement, that a school or course is approved pursuant to this chapter; or

(e) Employ unlicensed persons to practice nursing in this state unless the person is exempt from licensure by this chapter; or

(f) Aid, abet, assist or encourage any person in violating this chapter.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by fine not to exceed three hundred dollars (\$300) or by imprisonment not to exceed six (6) months or both such fine and imprisonment.

History.

I.C., § 54-1413, as added by 1977, ch. 132,

§ 2, p. 279; am. and redesign. 1998, ch. 118,

§ 11, p. 435; am. 2002, ch. 80, § 8, p. 178.

STATUTORY NOTES

Prior Laws.

Another former § 54-1414 was repealed.
See Prior Laws, § 54-1412.

Former § 54-1414 was amended and redesignated as § 54-1415 by § 12 of S.L. 1998, ch. 118.

Compiler's Notes.

This section was formerly compiled as § 54-1413.

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 65 et seq.

54-1415. Existing licenses. — Any person holding a license to practice nursing in this state on March 23, 1977, shall be recognized as licensed hereunder and shall be subject to all provisions of this act. The rules of the board in effect at the time of enactment of this act, and the fees fixed by the statute repealed by this act shall remain in full force and effect until the board has adopted supplemental rules pursuant to this act.

History.

I.C., § 54-1414, as added by 1977, ch. 132,

§ 2, p. 279; am. and redesign. 1998, ch. 118,

§ 12, p. 435.

STATUTORY NOTES

Prior Laws.

Former § 54-1415, which comprised I.C., § 54-1415, as added by 1977, ch. 132, § 2, p. 279, was repealed by S.L. 1998, ch. 118, § 14, effective July 1, 1998.

Another former § 54-1415 was repealed.
See Prior Laws, § 54-1412.

Compiler's Notes.

This section was formerly compiled as § 54-1414.

The words "this act" refer to S.L. 1977, ch. 132, which is compiled as §§ 54-1401 to 54-1406, 54-1407, 54-1408, and 54-1410A to 54-1415.

54-1416. Injunction. — Whenever any person violates any of the provisions of this act, the board may maintain an action in the name of the state of Idaho to enjoin said person from any further violations, such action to be brought either in the county in which said acts are claimed to have been or are being committed, in the county where the defendant resides, or in Ada County. Upon the filing of a verified complaint the district court, if

satisfied that the acts complained of have been or probably are being or may be committed, may issue a temporary restraining order and/or preliminary injunction, without bond, enjoining the defendant from the commission of any such act or acts constituting said violations. A copy of said complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other similar civil actions. If the commission of said act or acts be established, the court shall enter a decree permanently enjoining said defendant from committing said act or acts. In case of violation of any injunction issued under the provisions of this section, the court or the judge thereof at chambers, may summarily try and punish the offender for contempt of court.

History.

I.C., § 54-1416, as added by 1984, ch. 57,
§ 6, p. 101.

STATUTORY NOTES

Prior Laws.

Former § 54-1416 which comprised S.L. 1951, ch. 76, § 5, p. 129; 1965, ch. 92, § 5, p. 153; 1974, ch. 13, § 115, p. 138, was repealed by S.L. 1977, ch. 132, § 1.

were added by S.L. 1984, chapter 57, which is codified as §§ 54-1402, 54-1404, 54-1405, 54-1411, 54-1413, and 54-1416. The reference probably should be to "this chapter".

Compiler's Notes.

The words "this act", in the first sentence,

54-1417. Advisory committee to the board. — There is hereby created and established an advisory committee to the board on issues related to the advanced practice of nursing.

(1) The committee shall consist of at least ten (10) members appointed by the board of nursing: four (4) advanced practice registered nurses, one (1) from each of the statutorily recognized advanced practice roles; four (4) Idaho licensed physicians; one (1) Idaho licensed pharmacist; and one (1) person who is a layperson to health care occupations ("public member"). The physician and pharmacist members shall be selected by the board from lists of nominees supplied by the Idaho board of medicine and the Idaho board of pharmacy, respectively. Members shall serve three (3) year terms ending on June 30 in the last year of the member's term.

(2) The committee shall meet quarterly or at such times as may be determined by the committee or the board to be necessary.

(3) The committee shall: (a) respond to questions posed by the board or board staff regarding advanced practice nursing; (b) consider nonroutine applications for advanced practice nursing licenses and make recommendations to the board; (c) review complaints against advanced practice nurses and make recommendations to the board; and (d) recommend to the board the scope of practice of advanced practice nurses, using national standards as a guideline.

(4) The committee's recommendations, using national standards as a guideline, may be adopted, rejected or modified by the board, provided that the board shall not expand the scope of practice or prescriptive authority of

an advanced practice nurse beyond that recommended by the advisory committee.

History.

I.C., § 54-1417, as added by 1998, ch. 118,
§ 13, p. 435; am. 2012, ch. 142, § 8, p. 371.

STATUTORY NOTES**Cross References.**

Board of medicine, § 54-1805.
Board of nursing, § 54-1403.
Board of pharmacy, § 54-1706.

Prior Laws.

Former § 54-1417, which comprised 1951, ch. 76, § 6, p. 129; 1965, ch. 92, § 5, p. 153; 1974, ch. 13, § 116, p. 138 was repealed by S.L. 1977, ch. 132, § 1.

Amendments.

The 2012 amendment, by ch. 142, deleted
“of certified nurse midwives, clinical nurse

specialists and nurse practitioners” from the end of the introductory paragraph; rewrote subsection (1), expanding the board of nursing from five members to ten members; deleted paragraph (3)(d), which read, “consider applications for prescriptive authority and make recommendations to the board”; and redesignated paragraph (3)(e) as present paragraph (3)(d).

Effective Dates.

Section 9 of S.L. 2012, ch. 142 provided that section 8 of the act shall be in full force and effect on and after July 1, 2012.

54-1418. Nurse licensure compact. —

The terms and conditions of the nurse licensure compact are hereby enacted in substantially the following form:

NURSE LICENSURE COMPACT**ARTICLE I****FINDINGS AND DECLARATION OF PURPOSE**

(1) The party states find that:

- (a) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
- (b) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
- (c) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation’s health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;
- (d) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and
- (e) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(2) The general purposes of this compact are to:

- (a) Facilitate the states’ responsibility to protect the public’s health and safety;
- (b) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

- (c) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;
- (d) Promote compliance with the laws governing the practice of nursing in each jurisdiction; and
- (e) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

DEFINITIONS

As used in this compact:

- (1) "Adverse action" means a home or remote state action.
- (2) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.
- (3) "Coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.
- (4) "Current significant investigative information" means:
 - (a) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
 - (b) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.
- (5) "Home state" means the party state which is the nurse's primary state of residence.
- (6) "Home state action" means any administrative, civil, equitable or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.
- (7) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.
- (8) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

(9) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(10) "Party state" means any state that has adopted this compact.

(11) "Remote state" means a party state, other than the home state:

(a) Where the patient is located at the time nursing care is provided; or

(b) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(12) "Remote state action" means:

(a) Any administrative, civil, equitable or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(b) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "State practice laws" means those individual party's state laws and rules or regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

GENERAL PROVISIONS AND JURISDICTION

(1) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(2) Party states, in accordance with state due process laws, may limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(3) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of

a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(4) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(5) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

APPLICATIONS FOR LICENSURE IN A PARTY STATE

(1) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other party state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(2) A nurse in a party state shall hold licensure in only one (1) party state at a time, issued by the home state.

(3) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(4) When a nurse changes primary state of residence by:

(a) Moving between two (2) party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(b) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(c) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

ADVERSE ACTIONS

In addition to the general provisions described in article III, the following provisions apply:

(1) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(2) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action(s), and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(3) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(4) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(5) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(6) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE NURSE LICENSING BOARDS

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(1) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(2) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the

attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

(3) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state; and

(4) Promulgate uniform rules and regulations as provided for in article VIII(3).

ARTICLE VII

COORDINATED LICENSURE INFORMATION SYSTEM

(1) All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(2) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(3) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party states' licensing boards.

(4) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(5) Any personally identifiable [identifiable] information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(6) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(7) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII

COMPACT ADMINISTRATION AND INTERCHANGE OF INFORMATION

(1) The head of the nurse licensing board, or his/her designee, of each party state shall be the administrator of this compact for his/her state.

(2) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(3) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states under the authority invested under article VI(4).

ARTICLE IX

IMMUNITY

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE X

ENTRY INTO FORCE, WITHDRAWAL AND AMENDMENT

(1) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(2) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(3) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(4) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY

(1) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to a severable matter.

(2) In the event party states find a need for settling disputes arising under this compact:

(a) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state(s) involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(b) The decision of a majority of the arbitrators shall be final and binding.

History.

I.C., § 54-1418, as added by 2001, ch. 76,
§ 3, p. 184.

STATUTORY NOTES

Cross References.

Board of nursing, § 54-1403.

Prior Laws.

Former section 54-1418, which comprised 1951, ch. 76, § 7, p. 129; 1965, ch. 92, § 61, p. 153; 1974, ch. 13, § 117, p. 138 was repealed by S.L. 1977, ch. 132, § 1.

Compiler's Notes.

For more on the nurse licensure compact, see <https://www.ncsbn.org/nlc.htm>.

The bracketed insertion in Article VII(5) was added by the compiler to supply the obviously intended term.

54-1419 — 54-1426. Advisory council of practical nurses — Licensed practical nurse — Funds — Schools of nursing — Penalties. [Repealed].

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1951, ch. 76, §§ 8 to 15, p. 129; 1965, ch. 92, §§ 6 to 11,

p. 153; 1974, ch. 13, §§ 117 to 119, p. 138 were repealed by S.L. 1977, ch. 132, § 1.

CHAPTER 15

OPTOMETRISTS

SECTION.

- 54-1501. Practice of optometry defined.
- 54-1502. License a prerequisite to practice.
- 54-1502A. Nonlicensed persons — Penalties and remedies.
- 54-1503. State board of optometry established — Qualifications.
- 54-1504. State board of optometry — Notice of vacancy — Nominees. [Repealed.]
- 54-1505. State board of optometry — Qualifications of members. [Repealed.]
- 54-1506. License fees.
- 54-1507. [Repealed.]
- 54-1508. State board of optometry — Organization — Meetings — Expenses.
- 54-1509. State board of optometry — Powers and duties.
- 54-1510. Revocation of licenses — Grounds.
- 54-1511. Procedure — Contested cases — Notice — Hearing records. [Repealed.]
- 54-1512. Penalties and reinstatement.
- 54-1513. Duty of prosecuting attorney — Duty of attorney general.

SECTION.

- 54-1514. Publication of directory and law.
- 54-1515. Limitations on application of chapter.
- 54-1516. Limitation on application of chapter — Nurses, school teachers or welfare workers.
- 54-1517. Ophthalmic lens or prism — Acceptance for duplication by other than licensed optometrist or physician prohibited — Exception.
- 54-1518. Bureau of occupational licenses — Powers and duties.
- 54-1519. Examinations — Applications.
- 54-1520. Qualifications of applicants.
- 54-1521. Conduct of examinations — Subject included.
- 54-1522. Licenses — Issuance — Renewal and reinstatement — Recording and display.
- 54-1523. Fees.
- 54-1524. Injunction procedure.
- 54-1525. Referrals by optical firms prohibited.

54-1501. Practice of optometry defined. — Optometry is defined as the science which relates to the examination, diagnosis and treatment of conditions of or relating to the eyes and/or eyelids, the analysis of their function and the employment of preventive or corrective measures to ensure maximum vision and comfort. The practice of optometry is declared to be a learned profession. The practice of optometry affects the public health, welfare and safety and the public interest requires regulation and control of the practice of optometry and limitation of the practice to qualified persons. The “practice of optometry” means:

(1) To engage in the profession of examining, testing, measuring, treating, correcting, developing or improving the human visual apparatus;

(2) To display any sign, circular, advertisement or device offering to examine eyes, test eyes, fit glasses, adjust frames or prescribe lenses, or by any means or method set oneself forth as an optometrist, doctor of optometry, optometric physician, optical doctor, doctor of optical science, O.D., Opt. D., optician, optical specialist, eye specialist, or refractionist, or any other designation of like import;

(3) To employ in the examination, diagnosis or treatment of another, any means, including the use of diagnostic pharmaceutical agents and pharmaceutical agents for therapeutic use, for the measurement, improvement or development of any or all functions of human vision or the assistance of the powers of range of human vision or the determination of the accommodative or refractive status of human vision or the scope of its functions in general. The state board of optometry may, pursuant to rules adopted by it, issue a

certificate to optometrists licensed in this state authorizing the optometrist to prescribe, administer and dispense such therapeutic pharmaceutical agents for the treatment of conditions of the eye and/or eyelid, as approved by the board of optometry and as identified in rules adopted by the board of optometry. Such certificate shall only be issued to an optometrist who:

- (a) Has successfully passed the "treatment and management of ocular disease" section of the optometrist examination approved by the international association of boards of examiners in optometry, inc. or an equivalent examination as may be approved by the state board of optometry;
- (b) Is the holder of a certificate for the use of diagnostic pharmaceutical agents issued by the state board of optometry; and
- (c) Has completed such appropriate additional educational and clinical experience requirements as shall be established by the state board of optometry pursuant to section 54-1509, Idaho Code;
- (4) To remove superficial foreign bodies and to diagnose and treat superficial conditions of the eye and eyelid. The practice of optometry shall not include the use of therapeutic lasers;
- (5) To sell or offer for sale, otherwise than on prescription, any lens with spherical, prismatic or cylindrical power, including plano or cosmetic contact lenses;
- (6) To prescribe or adapt lenses, including contact lenses, exercises, orthoptics, vision therapy or other physical means to correct defects or adjust human vision to the conditions of a special occupation; or
- (7) To do or offer to do any of the foregoing with intent of receiving therefor, either directly or indirectly, any fee, gift, remuneration or compensation whatsoever.

History.

I.C., § 54-1501, as added by 1972, ch. 91, § 2, p. 179; am. 1981, ch. 73, § 1, p. 104; am. 1987, ch. 210, § 1, p. 443; am. 1989, ch. 33,

§ 1, p. 38; am. 1990, ch. 299, § 1, p. 826; am. 1993, ch. 110, § 1, p. 280; am. 1997, ch. 300, § 1, p. 300; am. 2009, ch. 118, § 1, p. 376.

STATUTORY NOTES

Cross References.

State board of optometry, § 54-1503.

Prior Laws.

Former §§ 54-1501 to 1510, 54-1512 to 54-1521, which comprised S.L. 1919, ch. 34, §§ 1 to 9, 11, 13 to 15, 17, 18, p. 115; C.S., §§ 2155 to 2163, 2165, 2167 to 2171; 1923, ch. 105, § 1, p. 131; 1925, ch. 155, §§ 1, 2, p. 291; C.S., § 2169-A, as added by 1925, ch. 155, § 3, p. 291; I.C.A., §§ 53-1701 to 53-1709, 53-1711 to 53-1718; 1945, ch. 104, §§ 1 to 3, 8, p. 153; I.C.A., § 53-1715A, as added by 1945, ch. 104, §§ 6, 7, p. 153; 1955, ch. 165, § 1, p. 332; 1963, ch. 262, § 1, p. 671; 1965, ch. 54, § 1, p. 88; 1965, ch. 59, § 1, p. 94; 1965, ch. 130, § 1, p. 257; 1965, ch. 156, § 1, p. 302; 1965, ch. 164, § 7, p. 317; 1965, ch. 201, § 5, p. 446;

1969, ch. 464, §§ 13, 14, p. 1304, were repealed by S.L. 1972, ch. 91, § 1.

Amendments.

The 2009 amendment, by ch. 118, in the first sentence in the introductory paragraph, inserted "diagnosis"; in subsection (4), inserted "therapeutic"; and in subsection (5), deleted "for the aid of human vision" following "cylindrical power" and added "including plano or cosmetic contact lenses."

Compiler's Notes.

The international association of boards of examiners in optometry, referred to in paragraph (3)(a), was renamed as the association of regulatory boards of optometry in 1999. See <https://www.arbo.org>.

JUDICIAL DECISIONS

Cited in: *Evans v. Griswold*, 129 Idaho 902, 935 P.2d 165 (1997).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 7, 32, 33.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

A.L.R. — Liability of optometrist or optician for malpractice. 51 A.L.R.3d 1273.

Fitting of contact lenses as practice of optometry. 77 A.L.R.3d 817.

What constitutes practice of "optometry." 82 A.L.R.4th 816.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

Ophthalmological malpractice. 30 A.L.R.5th 571.

54-1502. License a prerequisite to practice. — (1) It is unlawful for any person to practice optometry unless he shall obtain a license to do so as provided in this chapter.

(2) Any person who shall practice or attempt to practice optometry, as defined in this chapter, without having at the time of so doing a valid license to practice optometry issued by the state board of optometry shall be deemed guilty of a misdemeanor. Any person licensed under another chapter of Idaho Code to perform these functions shall be exempt from the provisions of this chapter. An optician lawfully practicing opticianry within the state of Idaho is not in violation of the provisions of this chapter.

(3) It is a misdemeanor for an optometrist to knowingly aid or abet any person or entity to practice optometry if such person or entity is not authorized by Idaho Code to practice according to the provisions of this chapter.

History.

I.C., § 54-1502, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 120, p. 138;

am. 1997, ch. 300, § 2, p. 300; am. 2009, ch. 118, § 2, p. 376.

STATUTORY NOTES

Cross References.

Penalty for violation, § 54-1502A.

Prior Laws.

Former § 54-1502 was repealed. See Prior Laws, § 54-1501.

Amendments.

The 2009 amendment, by ch. 118, added the subsection (1) and (2) designations, and in subsection (2), inserted "opticianry" in the last sentence; and added subsection (3).

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, §§ 11, 12.

54-1502A. Nonlicensed persons — Penalties and remedies. — (1) The board may investigate any person engaged in the practice of optometry within the state of Idaho or any person believed to have acted as an optometrist without being duly licensed as required by this chapter. Upon receipt of a written complaint, the board shall perform an investiga-

tion of the facts alleged. If the board investigation reveals that the facts alleged or received are sufficient to proceed with formal action, the board may authorize the filing of an administrative complaint against the person and may seek injunctive relief prohibiting such person from engaging in the practice of optometry. In addition or alternatively, the board may refer violators of the provisions of this chapter for prosecution pursuant to section 54-1513, Idaho Code.

(2) Each violation of the provisions of section 54-1502, Idaho Code, shall, upon conviction, result in a fine in an amount not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail for not less than thirty (30) days but not more than ninety (90) days, or by both such fine and imprisonment and, in addition, shall require the payment of the cost and fees incurred in the investigation and prosecution of the violation.

History.

I.C., § 54-1502A, as added by 2009, ch. 118,
§ 3, p. 376.

54-1503. State board of optometry established — Qualifications.

— (1) There is hereby established in the department of self-governing agencies a state board of optometry composed of five (5) members who shall be appointed by the governor. The governor may consider recommendations for appointment to the board from any optometric association or any individual residing in this state. Members will serve staggered terms of five (5) years each after the effective date of this act unless otherwise provided in this chapter. A vacancy in membership on the board shall occur when the regular term of a member expires or when a member dies, resigns or is removed from office by the governor. Appointments to fill a vacancy because of the expiration of a regular term shall be filled by the governor by appointment of a member for a five (5) year term. Appointments to fill a vacancy occurring for some reason other than expiration of a term of office shall be made for the unexpired term which is being filled. The members of the board shall serve at the pleasure of the governor.

(2) Each member of the state board of optometry shall be a licensed optometrist in the state of Idaho and shall have been a resident of and lawfully practicing optometry within the state of Idaho for a period of not less than five (5) years immediately preceding his appointment.

History.

I.C., § 54-1503, as added by 1972, ch. 91,
§ 2, p. 179; am. 1974, ch. 13, § 121, p. 138;

am. 2000, ch. 469, § 124, p. 1450; am. 2009,
ch. 118, § 4, p. 376; am. 2011, ch. 307, § 1, p.
875.

STATUTORY NOTES**Cross References.**

Department of self-governing agencies,
§ 67-2601.

Prior Laws.

Former § 54-1503 was repealed. See Prior
Laws, § 54-1501.

Amendments.

The 2009 amendment, by ch. 118, in the section catchline, added “qualifications”; added the subsection (1) designation, and therein substituted “chapter” for “act” throughout, and deleted the former second sentence, which contained outdated language

pertaining to duties of the bureau of occupational licenses; and added subsection (2).

The 2011 amendment, by ch. 307, in subsection (1), added “shall be appointed by the governor” to the end of the first sentence, added the second sentence, and substituted the last sentence for “The governor may remove any member of the board from membership on the board who is found by the governor to be mentally or physically incapable of acting, or to be neglecting or refusing to act,

or who ceases to have the qualifications of a member as provided in this chapter.”

Compiler's Notes.

The phrase “the effective date of this act,” in the third sentence in subsection (1), refers to the effective date of S.L. 1972, ch. 91, which was June 30, 1972.

Effective Dates.

Section 3 of S.L. 2011, ch. 307 declared an emergency. Approved April 11, 2011.

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 9.

C.J.S. — 70 C.J.S., Physicians and Surgeons, §§ 9, 10.

54-1504. State board of optometry — Notice of vacancy — Nominees. [Repealed.]

Repealed by S.L. 2011, ch. 307, § 2, effective April 11, 2011.

History.

I.C., § 54-1504, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 122, p. 138.

STATUTORY NOTES

Prior Laws.

Another former § 54-1504 was repealed. See Prior Laws, § 54-1501.

54-1505. State board of optometry — Qualifications of members. [Repealed.]

STATUTORY NOTES

Prior Laws.

Another former § 54-1505 was repealed. See Prior Laws, § 54-1501.

1505, as added by 1972, ch. 91, § 1, p. 179, was repealed by S.L. 2009, ch. 118, § 5.

Compiler's Notes.

This section, which comprised I.C., § 54-

54-1506. License fees. — (1) All fees of any kind collected under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account].

(2) The annual fee for renewal of a license shall be established by board rule, not to exceed one hundred seventy-five dollars (\$175).

History.

I.C., § 54-1505, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 123, p. 138;

am. 1986, ch. 109, § 1, p. 299; am. 1994, ch. 180, § 99, p. 420; am. 1999, ch. 151, § 1, p. 423; am. 2006, ch. 54, § 1, p. 164.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-1506 was repealed. See Prior Laws, § 54-1501.

Amendments.

The 2006 amendment, by ch. 54, rewrote the section which formerly read: "**State board of optometry fund — Creation.** (1) All fees of any kind collected under the provisions of this act and all fees collected from optometrists in or out of the state of Idaho by law, except those fees required by subsection (2) of this section and section 54-1523, Idaho Code, shall be deposited in the state treasury to the credit of a separate fund to be known as the state board of optometry fund and all such moneys deposited into such fund are hereby appropriated to carrying out the purpose and objects of this act and to pay salaries, fees, costs and expenses incurred in connection with the purpose and objects of this act. The funds collected shall remain perpetually in the state board of optometry fund from one biennium to the next. The moneys and funds in the state board of optometry fund shall be paid out upon warrants drawn by the state controller upon presentation of proper vouchers approved by the state board of optometry

or its executive secretary acting within his delegated authority. Moneys paid from this fund are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code (Standard Travel Pay and Allowance Act of 1949).

"(2) The annual fee for renewal of a license shall be established by board rule, not to exceed one hundred dollars (\$100), which shall be paid to the bureau of occupational licenses, and to pay salaries, fees, costs and expenses incurred in connection with the purposes and objects of this act."

Compiler's Notes.

The bracketed insertions in subsection (1) were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 99 of S.L. 1994, ch. 180 became effective January 2, 1995.

54-1507. Additional license fees. [Repealed.]*
STATUTORY NOTES**Prior Laws.**

Another former § 54-1507 was repealed. See Prior Laws, § 54-1501.

Compiler's Notes.

This section, which comprised I.C., § 54-

1507, as added by 1972, ch. 91, § 1, p. 179; am. 1974, ch. 13, § 124, p. 138; am. 1986, ch. 109, § 2, p. 299; am. 2005, ch. 37, § 1, p. 157, was repealed by S.L. 2006, ch. 54, § 2.

54-1508. State board of optometry — Organization — Meetings — Expenses. — The board of optometry shall meet on or before September 15 of each year and select from its members a chairman and a secretary who shall serve at the pleasure of the board. The secretary shall keep the minutes of the meetings of the board, maintain the files and records of the board, maintain a roster of all persons licensed as optometrists under this act and on or before October 1 of each year, forward to the bureau of occupational licenses a certified list of those persons who have paid the fees required by this act.

The board of optometry may meet at stated times and places and shall meet upon the call of its chairman or upon written request of a majority of its members. Three (3) members shall constitute a quorum and a majority of the members present at a meeting at which a quorum is present shall

determine the action of the board. Each member of the board shall be notified of any meeting called for any purpose.

Out of the moneys appropriated to the bureau from fees paid under section 54-1506(2), Idaho Code, or otherwise appropriated from fees paid under section 54-1506(2), Idaho Code, and deposited in the occupational license account established by section 67-2605, Idaho Code, the members of the board of optometry shall be compensated as provided by section 59-509(n), Idaho Code.

History.

I.C., § 54-1508, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 125, p. 138; am. 1976, ch. 166, § 13, p. 596; am. 1980, ch.

247, § 61, p. 582; am. 1986, ch. 109, § 3, p. 299; am. 2006, ch. 54, § 3, p. 164; am. 2010, ch. 65, § 1, p. 114.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-1508 was repealed. See Prior Laws, § 54-1501.

Amendments.

The 2006 amendment, by ch. 54, rewrote the last paragraph, which formerly read: "Out of moneys appropriated from fees paid under section 54-1507, Idaho Code, the members of the board of optometry shall be compensated as provided by section 59-509(h), Idaho Code,

not otherwise paid from moneys appropriated by the legislature."

The 2010 amendment, by ch. 65, in the third paragraph, substituted "59-509(n)" for "59-509(h)"; and deleted the former last paragraph which read: "The members of the board of optometry shall be compensated as provided by section 59-509(h), Idaho Code".

Compiler's Notes.

The term "this act," appearing in the first paragraph, refers to S.L. 1972, ch. 91, which is codified as §§ 54-1501, 54-1502, 54-1503, 54-1504, 54-1508 to 54-1510, and 54-1513 to 54-1525.

54-1509. State board of optometry — Powers and duties. — In order to protect the public in the practice of optometry, better enable members of the public to fix professional responsibility and further safeguard the doctor-patient relationship, the state board of optometry shall have the following powers and duties:

(1) To make and prescribe rules for a fair and wholly impartial method of examination of candidates to practice optometry.

(2) To make and prescribe rules defining for the optometrists what shall constitute a school, college or university or department of a university or other institution reputable and in good standing and to determine the reputability and good standing of a school, college or university or department of a university or other institution by reference to a compliance with such rules.

(3) To make and prescribe rules to establish a standard of preliminary education deemed requisite to admission to a school, college or university and to require satisfactory proof of the enforcement of such standards by schools, colleges and universities.

(4) To make and prescribe rules governing the relicensing of persons applying for a license to practice optometry in the state of Idaho after a failure to maintain a license for a period in excess of five (5) years.

(5) To establish by rule the qualifications necessary to grant a license to

practice optometry in Idaho by endorsement to persons licensed in other states or foreign countries.

(6) To conduct examinations to ascertain the qualifications and fitness of applicants to practice optometry or to recognize by rule a national testing agency for the administration and grading of such test.

(7) To make and prescribe rules governing the minimum amount and kind of continuing education in optometry to be required annually of each optometrist seeking to renew his license to practice optometry in the state of Idaho.

(8) To make, prescribe and promulgate rules prescribing a code of ethics and standards of professional conduct in practice for the purpose of regulating and governing the practice of optometry by licensed optometrists within the state of Idaho and to change and modify its rules or prescribe new rules in order to improve the practice of optometry for the benefit of the people of the state of Idaho.

(9) To make, prescribe and promulgate rules regarding the establishment of "branch offices" in the state of Idaho by persons licensed to practice optometry.

(10) To make, prescribe and promulgate rules regarding advertising by optometrists licensed to practice in Idaho.

(11) To make, prescribe and promulgate rules defining "gross incompetence" as grounds for suspension or revocation of an optometrist's license as provided in section 54-1510, Idaho Code.

(12) To make, prescribe and promulgate rules governing the verification by an optometrist of the accuracy in compounding and the quality of the workmanship and materials used by any person, firm or corporation in the course of filling or compounding the optometrist's prescriptions for vision aids of any type prior to delivery by the optometrist.

(13) To make, prescribe and promulgate rules governing the issuance and release of prescriptions or copies of prescriptions by optometrists out of the office of the optometrist.

(14) To make, prescribe and promulgate rules governing the type and kind of records to be kept by each optometrist pertaining to all patients examined or for whom he has adapted optical accessories.

(15) To make, prescribe and promulgate such other rules required by this chapter or necessary or desirable for its enforcement and administration.

(16) The state board of optometry shall have the power to administer oaths, take depositions of witnesses in and out of the state of Idaho in the manner of civil cases, require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing before it or deposition authorized by it, pertaining in any manner to any matters of which it has authority to investigate and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers directed to the sheriff of any county of the state of Idaho, where such witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a civil case is returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in civil cases. In any

case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court, or any judge thereof, of any county in this state in which the proceeding is held upon application of the board, to compel obedience in proceedings for contempt as in the case of disobedience of the requirements of any subpoena issued from such court or for refusal to testify therein. The licensed person accused in such proceeding shall have the same right of subpoena upon making application to the board as set out in this chapter.

(17) The state board of optometry shall have the power to hire attorneys, investigators, hearing officers or other employees for carrying out the purpose of this chapter or to promote the interests of the profession of optometry.

(18) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

History.

I.C., § 54-1509, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 126, p. 138;

am. 1986, ch. 109, § 4, p. 299; am. 1989, ch. 33, § 1, p. 38; am. 1999, ch. 151, § 2, p. 423; am. 2009, ch. 118, § 6, p. 376.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-1509 was repealed. See Prior Laws, § 54-1501.

Amendments.

The 2009 amendment, by ch. 118, in subsection (5), added "or foreign countries"; in subsection (6), added "or to recognize by rule a national testing agency for the administration and grading of such test"; in subsection (7), substituted "seeking to renew his license"

for "seeking relicensure"; deleted subsection (9), which read: "To make, prescribe and promulgate rules governing the listing and identification of charges for materials and for professional services provided to members of the public by persons licensed to practice optometry in Idaho," and redesignated the subsequent subsections accordingly; in subsections (15) through (17), substituted "chapter" for "act"; and in subsection (17), deleted "in Idaho from funds available in the fund established by this act or from any other available funds" from the end.

54-1510. Revocation of licenses — Grounds. — Every license issued under the provisions of this chapter shall be subject to suspension, revocation or other discipline upon any of the following grounds pursuant to the procedures set forth in chapter 52, title 67, Idaho Code. All hearings conducted pursuant to this section, whether before the board or a hearing officer, shall be held in Ada county unless otherwise designated by the board.

(1) Fraud or deception in procuring license.

(2) Practicing optometry under a false or assumed name or as a representative or agent of any person, firm or corporation other than another licensed optometrist, a physician licensed to practice medicine and surgery under chapter 18, title 54, Idaho Code, or a professional service corporation, which has been incorporated under the authority of chapter 13, title 30, Idaho Code, by persons licensed to practice optometry under chapter 15, title 54, Idaho Code, or licensed to practice medicine and surgery under chapter 18, title 54, Idaho Code.

(3) Having been convicted or having received a withheld judgment or

suspended sentence in this or any other state of a felony, a crime involving moral turpitude, or any act related to the qualifications, functions or duties of an optometrist.

(4) Gross incompetency.

(5) Inability to practice optometry with reasonable skill and safety by reason of:

(a) Mental illness;

(b) Physical illness including, but not limited to, physical deterioration which adversely affects cognitive, motor or perceptive skills;

(c) Habitual or excessive use or abuse of drugs defined in law as controlled substances, alcohol, or any other substances which impair ability; or

(d) Having a communicable, contagious or infectious disease which endangers the health of patients.

(6) Failure to pay to the board or the bureau of occupational licenses the annual fee and to secure a renewal license, whereupon after twenty (20) days' notice by registered mail the license of such delinquent may be revoked; but the payment of such fee at or before the time of hearing, with such additional sum, not exceeding twenty-five dollars (\$25.00) as may be fixed by the board of optometry, shall excuse the default.

(7) Any practice or behavior of a character likely to deceive or defraud the public.

(8) Obtaining of any fee or compensation by fraud, deceit or misrepresentation.

(9) Employing, either directly or indirectly, any suspended or unlicensed optometrist to do optometric work.

(10) Advertising the practice of optometry in a false, misleading or deceptive manner.

(11) Employment or use of what are known as "cappers" or "steerers."

(12) Consistently accepting referrals that violate the laws of the state of Idaho.

(13) For willfully permitting or allowing or causing a person who is not a licensed optometrist or a licensed physician or surgeon to use the optometrist's prescription or optometric finding to fit contact lenses upon a person or member of the public.

(14) For violation of any of the provisions of this chapter or the rules or code of ethics made and promulgated by the state board of optometry, as authorized in section 54-1509, Idaho Code.

(15) For willfully attempting to violate, directly or indirectly, conspiring to violate, or assisting or participating in or abetting the violation of any of the provisions of this chapter or the rules or code of ethics made, prescribed or promulgated by the state board of optometry pursuant to the authority granted in this chapter.

(16) Having engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the licensee by the patient.

(17) Having committed any act which constitutes a felony or has committed any act which constitutes a crime involving moral turpitude.

History.

I.C., § 54-1510, as added by 1972, ch. 91, § 2, p. 179; am. 1973, ch. 286, § 1, p. 609; am.

1974, ch. 13, § 127, p. 138; am. 1989, ch. 33, § 2, p. 38; am. 1993, ch. 216, § 64, p. 587; am. 2009, ch. 118, § 7, p. 376.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.
State board of optometry, § 54-1503.

Prior Laws.

Former § 54-1510 was repealed. See Prior Laws, § 54-1501.

Amendments.

The 2009 amendment, by ch. 118, in sub-

section (13), deleted "or supply contact lenses directly to a member of the public" from the end; and, in subsections (14) and (15), substituted "chapter" for "act."

Effective Dates.

Section 2 of S.L. 1973, ch. 286 declared an emergency. Approved March 17, 1973.

54-1511. Procedure — Contested cases — Notice — Hearing records. [Repealed.]**STATUTORY NOTES****Prior Laws.**

Former § 54-1511, which comprised I.C., § 54-1511, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 128, p. 138, was repealed by S.L. 1989, ch. 33, § 3.

Another former § 54-1511 which comprised 1919, ch. 34, § 12, p. 115; C.S., § 2166; I.C.A., § 53-1712; am 1937, ch. 67, § 1, p. 91; am 1945, ch. 104, § 5, p. 153; am. 1955, ch. 165,

§ 2, p. 332, was repealed by S.L. 1972, ch. 91, § 1.

Compiler's Notes.

This section, which comprised I.C., § 54-1511, as added by 1989, ch. 33, § 4, p. 38, was repealed by S.L. 1993, ch. 216, § 65, effective July 1, 1993.

54-1512. Penalties and reinstatement. — (1) Upon the finding of the existence of grounds for discipline of any person holding a license, seeking a license, or renewing a license under the provisions of this chapter, the board of optometry may impose one or more of the following penalties:

- (a) Suspension of the offender's license for a term to be determined by the board;
- (b) Revocation of the offender's license;
- (c) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of optometry in a particular manner for a term to be determined by the board;
- (d) Refusal to renew offender's license;
- (e) Placement of the offender on probation and supervision by the board for a period of time and under terms and conditions to be determined by the board;
- (f) Imposition of an administrative fine not to exceed two thousand dollars (\$2,000) plus costs of prosecution and reasonable attorney fees; or
- (g) Written letters of censure or reprimand which shall become a permanent record in the files of the licensee.

(2) Any person whose license to practice optometry in this state has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation

and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(3) Nothing herein shall be construed as barring criminal prosecutions for violations of this chapter where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(4) All final decisions by the board shall be subject to judicial review pursuant to the provisions of the administrative procedure act.

History.

I.C., § 54-1512, as added by 1989, ch. 33,
§ 5, p. 38.

STATUTORY NOTES

Cross References.

Administrative procedure act, § 67-5201 et seq.

179; am. 1974, ch. 13, § 129, p. 138, was repealed by S.L. 1989, ch. 33, § 3.

Prior Laws.

Former § 54-1512, which comprised I.C., § 54-1512, as added by 1972, ch. 91, § 2, p.

Another former § 54-1412 which comprised I.C.A., § 53-1712a, as added by 1945, ch. 104, § 6, p. 153; am. 1955, ch. 165, § 3, p. 332, was repealed by S.L. 1972, ch. 91, § 1.

54-1513. Duty of prosecuting attorney — Duty of attorney general. — It shall be the duty of the prosecuting attorney of each county to prosecute all violations of this chapter constituting a violation of criminal law and it shall be the duty of the attorney general of the state of Idaho to prosecute any actions brought under the provisions of section 54-1524, Idaho Code, if requested by the state board of optometry.

History.

I.C., § 54-1513, as added by 1972, ch. 91,

§ 2, p. 179; am. 1974, ch. 13, § 130, p. 138; am. 1993, ch. 216, § 66, p. 587.

STATUTORY NOTES

Cross References.

State board of optometry, § 54-1503.

Prior Laws.

Former § 54-1513 was repealed. See Prior Laws, § 54-1501.

54-1514. Publication of directory and law. — The bureau of occupational licenses shall each year make available the names and addresses of all licensed optometrists of the state of Idaho and the laws applicable to the practice of optometry.

History.

I.C., § 54-1514, as added by 1972, ch. 91,

§ 2, p. 179; am. 1974, ch. 13, § 131, p. 138; am. 2009, ch. 118, § 8, p. 376.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-1514 was repealed. See Prior Laws, § 54-1501.

Amendments.

The 2009 amendment, by ch. 118, in the section catchline, deleted "pamphlet contain-

ing" following "Publication of"; and rewrote the section, which formerly read: "The bureau of occupational licenses shall each year print a pamphlet containing the names and addresses of all licensed optometrists of the state of Idaho and a copy of this chapter and other laws applicable to the practice of optometry and shall distribute a copy of such pamphlet to each licensed optometrist."

54-1515. Limitations on application of chapter. — A license to practice optometry, as provided in this chapter, is not required for the following practices:

1. Practice by persons authorized under the laws of this state to practice medicine and surgery.

2. The sale of eyeglasses or spectacles in or from a store, shop, or other permanently established place of business on prescription from persons authorized under the laws of this state to practice either optometry or medicine and surgery, by persons, firms and corporations who neither practice nor attempt to practice optometry.

3. The sale of ready-to-wear glasses equipped with convex spherical lenses, or sunglasses equipped with plano lenses, or industrial glasses or goggles with plano lenses used for industrial or agricultural eye protection, when the same are sold as merchandise and where the selection of the glasses is at the discretion of the purchaser, by persons, firms and corporations who neither practice nor attempt to practice optometry nor use in the testing of the eye therefor lenses other than the lenses actually sold, and who neither give nor offer spectacles or eyeglasses as premiums.

History.

I.C., § 54-1515, as added by 1972, ch. 91, § 2, p. 179.

STATUTORY NOTES

Prior Laws.

Former § 54-1515 was repealed. See Prior Laws, § 54-1501.

54-1516. Limitation on application of chapter — Nurses, school teachers or welfare workers. — It is not the intent of this chapter to prevent any nurse, school teacher or welfare worker, employed in public service, from ascertaining the probable need of visual services, provided such person does not attempt to diagnose or prescribe or to recommend any particular practitioner or system of practice.

History.

I.C., § 54-1516, as added by 1972, ch. 91, § 2, p. 179.

STATUTORY NOTES

Prior Laws.

Former § 54-1516 was repealed. See Prior Laws, § 54-1501.

54-1517. Ophthalmic lens or prism — Acceptance for duplication by other than licensed optometrist or physician prohibited —

Exception. — It shall be unlawful for any person other than a licensed optometrist or physician to accept or offer to accept for purpose of duplication any ophthalmic lens or prism ordinarily used before the human eye for corrective purposes, or for assisting vision; provided, however, that any manufacturing, dispensing or surfacing optician is hereby permitted to grind or supply, dispense, replace or duplicate any such lens in conformity with the prescription or instruction of any optometrist or physician duly licensed to practice within the state of Idaho. Contact lenses may be sold or dispensed in a retail or wholesale outlet or other permanently established place of business with an optical department only when the prescription specifically states on its face that it is intended for contact lenses and includes the type and specifications of the contact lens being prescribed.

History.

I.C., § 54-1517, as added by 1972, ch. 91, § 2, p. 179; am. 1985, ch. 67, § 1, p. 138.

STATUTORY NOTES

Prior Laws.

Former § 54-1517 was repealed. See Prior Laws, § 54-1501.

54-1518. Bureau of occupational licenses — Powers and duties.

— The bureau of occupational licenses shall have the following powers and duties:

1. To accept applications for examinations and issue licenses to optometrists pursuant to requirements of this chapter.
2. To maintain a registry of persons licensed to practice optometry in the state of Idaho available to the members of the general public and all applicants and rejected applicants for licenses.
3. To forward complaints against a licensed optometrist to the state board of optometry for review and investigation.
4. To assist in the investigation and prosecution of complaints filed against an optometrist under section 54-1510, Idaho Code.
5. At the discretion of the chief of the bureau and upon apparent failure or refusal of the state board of optometry to investigate or prosecute a complaint against an optometrist, to investigate the complaint and forward the report of investigation to the state board of optometry, and upon apparent failure or refusal of the state board of optometry to take further action to initiate proceedings under section 54-1510, Idaho Code, against an optometrist violating the terms of this act.

History.

I.C., § 54-1518, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 132, p. 138; am. 1993, ch. 216, § 67, p. 587.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.
State board of optometry, § 54-1503.

The term "this act," at the end of the section, refers to S.L. 1972, ch. 91, which is codified as §§ 54-1501, 54-1502, 54-1503, 54-1504, 54-1508 to 54-1510, and 54-1513 to 54-1525.

Compiler's Notes.

Former § 54-1518 was repealed. See Prior Laws, § 54-1501.

54-1519. Examinations — Applications. — Any person who shall desire to begin the practice of optometry in the state of Idaho shall file an application in his own handwriting on forms furnished by the board for an examination, which application shall state among other things, his correct name, age, place of residence, the name and location of the school or schools attended by the applicant, and date of such attendance, and whether the applicant is graduated from such school, and the place and with whom he has served as an intern and the exact length of time and nature of such internship. Such applications must be signed by the applicant under oath.

History.

I.C., § 54-1519, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 133, p. 138.

STATUTORY NOTES**Prior Laws.**

Former § 54-1519 was repealed. See Prior Laws, § 54-1501.

54-1520. Qualifications of applicants. — Every applicant for license to practice optometry shall be a person of good moral character, more than twenty-one (21) years of age, and shall present his certificate of graduation or diploma, or a certified true copy of his certificate of graduation or diploma, from an accredited college or university of optometry which meets with the requirements set out in the rules and regulations of the state board of optometry.

History.

I.C., § 54-1520, as added by 1972, ch. 91, § 2, p. 179.

STATUTORY NOTES**Cross References.**

Board of optometry, § 54-1503.

Prior Laws.

Former § 54-1520 was repealed. See Prior Laws, § 54-1501.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 24 et seq.

54-1521. Conduct of examinations — Subject included. — Except as herein otherwise provided, each applicant shall be examined to determine his knowledge of the subjects essential to the practice of optometry. Examinations shall be written and practical, and shall include the required subjects enumerated in the rules and regulations of the state board of optometry.

History.

I.C., § 54-1521, as added by 1972, ch. 91, § 2, p. 179.

STATUTORY NOTES**Cross References.**

Board of optometry, § 54-1503.

Prior Laws.

Former § 54-1521 was repealed. See Prior Laws, § 54-1501.

54-1522. Licenses — Issuance — Renewal and reinstatement — Recording and display. — If the applicant shall pass a satisfactory examination and shall show that he is a person of good moral character and that he possesses the qualifications required in this chapter to entitle him to be licensed as an optometrist, then, upon request, such applicant shall be entitled to a license authorizing the applicant to practice optometry in the state of Idaho. All licenses to practice optometry shall be issued in the name of the Idaho state board of optometry with the seal thereof attached. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. The failure to timely renew a license under this section shall require the payment of a fee of one hundred fifty dollars (\$150) for a license renewal in addition to other fees which may be required, or other sanctions which may be imposed under this chapter. Every person to whom a license is granted shall display the same, or a copy of the same certified to by the board in a conspicuous part of his office wherein the practice of optometry is conducted. It shall be unlawful for any person to practice optometry in the state of Idaho before complying with these requirements.

History.

I.C., § 54-1522, as added by 1972, ch. 91, § 2, p. 179; am. 1974, ch. 13, § 134, p. 138;

am. 1998, ch. 252, § 1, p. 822; am. 2003, ch. 21, § 9, p. 77.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, §§ 15 et seq., 43.

54-1523. Fees. — Each applicant for examination or reexamination after failure in a former examination shall remit a fee as established by board regulation not to exceed two hundred fifty dollars (\$250) with each application to the board.

History. § 2, p. 179; am. 1974, ch. 13, § 135, p. 138;
I.C., § 54-1523, as added by 1972, ch. 91, am. 1980, ch. 94, § 1, p. 204.

STATUTORY NOTES

Cross References.

Military fee exemption, § 67-2602A.

54-1524. Injunction procedure. — The board or any resident citizen may maintain an action in equity in the name of the state of Idaho to enjoin perpetually any person, firm, company, corporation or partnership from persisting in the doing of any acts constituting a violation of this chapter. Such action shall be brought in the district court of the county in which said act or acts or some of them are claimed to have been or are being committed, by filing a complaint setting forth said acts. The court, or a judge thereof at chambers, if satisfied from such complaint or by affidavits that the acts complained of have been or are being committed and will probably be persisted in, may issue a temporary writ enjoining the defendant from the commission of any such act or acts pending final disposition of the cause. The cause shall proceed as in other cases for injunction. If at the trial the commission of said act or acts by the defendant be established, and the court further finds that it is probable that defendant will continue therein or in similar violations, the court, or a judge thereof at chambers, shall enter a decree perpetually enjoining said defendant from thereafter committing said or similar acts.

History.

I.C., § 54-1524, as added by 1972, ch. 91,
§ 2, p. 179; am. 1974, ch. 13, § 136, p. 138.

STATUTORY NOTES

Effective Dates.

Section 194 of S.L. 1974, ch. 13 provided the

act should be in full force and effect on and after July 1, 1974.

54-1525. Referrals by optical firms prohibited. — It shall be unlawful for any person engaged in the business of manufacturing, selling or dispensing any ophthalmic materials, in any manner to influence or attempt to influence any patron in the choice of an optometrist or physician for the purpose of examining, treating, dispensing or prescribing any ophthalmic materials for such patron, and it shall be unlawful for any such person in any manner to suggest or imply to any such patron that such patron consult

with or be examined or treated by or procure a prescription for ophthalmic materials from any specific optometrist or physician, or one or more of several specific optometrists or physicians; provided, that any such person may show or supply to any such patron a typed or printed list containing the names and addresses of all physicians in the community covered by such list who specialize in whole or in part in the care of the eyes and containing also the names and addresses of all optometrists in such community; provided, however, that such list shall not be prepared or marked so as to draw unnecessary attention to one or more of the names thereon; and provided, further, that such list shall segregate and designate separately those practitioners licensed in this state to practice medicine and surgery and those licensed therein to practice optometry. The word "person," as used in this section, shall include any person, firm, corporation or association, and any employee or agent of any of the foregoing. The word "patron," as used in this section, shall include prospective as well as actual patrons or customers, and shall include also those acting for or on behalf of any such patron or prospective patron. The words "ophthalmic materials," as used in this section, shall include spectacles, eyeglasses, lenses, prisms, contact lenses, frames and mountings, and any other optical appliances or devices for visual correction.

History.

I.C., § 54-1525, as added by 1972, ch. 91,
§ 2, p. 179.

STATUTORY NOTES**Compiler's Notes.**

Section 3 of S.L. 1972, ch. 91 read: "If any provision, section or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision, section or clause, and to

this end, the provisions of this act are declared to be severable."

Effective Dates.

Section 4 of S.L. 1972, ch. 91 provided the act should take effect on and after June 30, 1972.

CHAPTER 16**NURSING HOME ADMINISTRATORS****SECTION.**

54-1601. Definitions.

54-1602. Supervision by licensed administrator required — Exception for administrator designee — Practice by unlicensed person prohibited.

54-1603. Board of examiners of nursing home administrators.

54-1604. Functions and duties of board — Fee for license applicants — Rules.

54-1605. Qualifications for examination for license.

54-1606. Subject matter of examination — Frequency.

SECTION.

54-1607. Issuance of license — Exemption — Educational programs — Administration of federal funds by board.

54-1608. Attendance at continuing education program — Revocation or suspension — Renewal and reinstatement.

54-1609. Endorsement of licenses.

54-1610. Administrators-in-training — Examination after one year — Quarterly reports — Exceptions.

54-1611. Misdemeanors listed — Penalties.

54-1612. Revocation or suspension of license,

SECTION.

reprimand, censure, or other discipline.

54-1613. Reissuance of revoked license.

SECTION.

54-1614. Judicial review of board action.

54-1615. Annual license fee. [Repealed.]

54-1616. Disposition of funds.

54-1601. Definitions. — As used in this act, unless otherwise stated, the following terms shall have the respective meanings hereinafter set forth or indicated:

(1) “Administrator designee” means a qualified individual filling a vacant nursing home administrator position pursuant to a signed agreement.

(2) “Board” means the board of examiners of nursing home administrators of the state of Idaho.

(3) “Examiner” means a member of the board of examiners of nursing home administrators of the state of Idaho.

(4) “Executive secretary” means the secretary of the board of examiners of nursing home administrators of the state of Idaho.

(5) “Health care facility” means any institution or facility which supplies all of the functional needs of an individual in need of residence care, and defined as such for licensing purposes under state law or pursuant to the rules for nursing homes, hospitals, residential or assisted living facilities, whether proprietary or nonprofit, and shall include, but not be limited to, health care facilities owned or administered by the state government or any agency or political subdivisions thereof.

(6) “Nursing home administrator” means any individual responsible for planning, organizing, directing, and controlling the operation of a nursing home, or who in fact performs such functions, whether or not such functions are shared by one (1) or more other persons.

(7) “Nursing home administrator-in-training” means an individual registered as such under and pursuant to the provisions of this act.

(8) “Practice of nursing home administration” means that planning, organizing, directing, and control of the operation of a nursing home.

(9) “Temporary permit” means a privilege granted by the board to an individual who has submitted an endorsement application evidencing a license in good standing in another state allowing their temporary practice as a nursing home administrator until their application is acted upon by the board.

History.

1970, ch. 177, § 1, p. 512; am. 1980, ch. 92, § 1, p. 197; am. 1989, ch. 193, § 13, p. 475;

am. 1999, ch. 161, § 1, p. 440; am. 2000, ch. 274, § 131, p. 799; am. 2001, ch. 77, § 1, p. 193.

STATUTORY NOTES**Prior Laws.**

Former chapter 16 of title 54, which comprised S.L. 1907, p. 128, §§ 2, 4 to 6; compiled and reen. R.C., §§ 1368 to 1371; C.L., §§ 1368 to 1371; I.C.A., §§ 53-1801 to 53-1804, was repealed by S.L. 1969, ch. 84, § 14.

Compiler's Notes.

The words “this act,” in the introductory paragraph and in subsection (7), refer to S.L. 1970, ch. 177, which is compiled as §§ 54-1601 to 54-1614.

RESEARCH REFERENCES

A.L.R. — Regulation of nursing or rest homes. 53 A.L.R.4th 689.

54-1602. Supervision by licensed administrator required — Exception for administrator designee — Practice by unlicensed person prohibited. — No nursing home in the state shall be operated unless it is under the supervision of an administrator who holds a currently valid nursing home administrator's license issued pursuant to this act, except that after an administrator's position becomes vacant, a nursing home may operate under a responsible person authorized by signed agreement to act as an administrator designee. The administrator designee shall be qualified by documented experience to assume delegated duties, and shall not act for more than eight (8) continuous weeks unless an exception is granted by the board. An Idaho licensed administrator shall enter into an agreement, which shall be submitted to the board, to consult with the administrator designee. No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that he is a nursing home administrator unless such person shall have been duly licensed as a nursing home administrator as required by this act.

History.

1970, ch. 177, § 2, p. 512; am. 1999, ch. 161, § 2, p. 440; am. 2001, ch. 77, § 2, p. 193.

STATUTORY NOTES**Prior Laws.**

Former § 54-1602 was repealed. See Prior Laws, § 54-1601.

177, which is compiled as §§ 54-1601 to 54-1614.

Compiler's Notes.

The words "this act" refer to S.L. 1970, ch.

54-1603. Board of examiners of nursing home administrators. — (1) There is hereby created in the department of self-governing agencies a board of examiners of nursing home administrators, which board shall consist of five (5) members, and composed of two (2) public or private nursing home administrators, duly licensed and registered under this act, and three (3) other members as hereinafter described, except that such members of the initial board shall be required only to possess the qualifications and be eligible for licensure as required under this act, one (1) member shall be selected from any other profession, agency, or institution concerned with the care of chronically ill and infirm patients; one (1) licensed nurse from the nursing profession; and one (1) member representative of the public at large; but no more than two (2) of the members of the board shall be officials or full-time employees of state or local governments, except that they may be administrators of publicly owned nursing homes. All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state.

(2) One (1) member of the initial board shall be appointed for a one (1) year term of office, two (2) members of the initial board shall be appointed for a two (2) year term of office, and two (2) members of the initial board shall be appointed for a three (3) year term of office. Thereafter, the term of office for each member of the board shall be three (3) years.

(3)(a) Appointments to the board shall be made by the governor after consultation with the executive board of any organized and generally recognized group concerned with nursing home administration. Each member of the board shall hold office until his successor is duly appointed and qualified. Dismissals shall be by the governor, for reasonable cause.

(b) The two (2) nursing home administrators who are members must be appointed from a list of three (3) submitted by any organized and generally recognized group concerned with nursing home administration.

(c) Members of the board shall be compensated as provided by section 59-509(l), Idaho Code.

(4) The board shall elect annually from its membership a chairman and vice chairman. The board shall hold two (2) or more meetings each year. A majority of the board membership shall constitute a quorum.

(5) The board shall exercise its powers and perform its duties and functions specified by this act.

(6) The board may appoint an executive secretary. He shall be the executive officer to the board but shall not be a member of the board. He shall have such powers and shall perform such duties as are prescribed by law and the rules of the board. A clerk and sufficient deputy clerks to adequately assist the board and the executive secretary in the keeping of the records and in the performance of their duties may be appointed by the board. All employees of the board shall be appointed, and serve in accordance with the provisions of law.

(7) The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest.

History.

1970, ch. 177, § 3, p. 512; am. 1974, ch. 13, § 137, p. 138; am. 1980, ch. 92, § 2, p. 197;

am. 1980, ch. 247, § 62, p. 582; am. 1996, ch. 66, § 5, p. 198.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies, § 67-2601 et seq.

Prior Laws.

Former § 54-1603 was repealed. See Prior Laws, § 54-1601.

Amendments.

This section was amended twice in 1980 by chapter 92, § 2, approved March 19, 1980 and chapter 247, § 62, approved March 31, 1980. With the exception of the amendment to subsection (3)(c) there were no conflicts between the two chapters. Since chapter 247 was the later expression of the legislature, its amend-

ment of subsection (3)(c) has been compiled. The amendment of subsection (3)(c) by ch. 92, § 2 would read "(c) Members of the Board shall be reimbursed for their actual and necessary traveling and subsistence expenses when absent from their place of residence in attendance at meetings or in other performance of their duties under this act. In addition they shall be paid thirty-five dollars (\$35.00) per day while on actual business of the Board." Chapter 247, § 62 made no other changes in the section. Chapter 92, § 2 in subsection (1) substituted "two (2)" for "three (3)" following "shall consist of five (5) members," and "agency" for "agencies" following "from any other profession," and added "one

(1) licensed nurse from the nursing profession" following "chronically ill and infirm patients"; in subsection (3)(a) substituted "any organized and generally recognized group concerned with nursing home administration" for "the Idaho association of licensed nursing homes"; and in subsection (3)(b) substituted "two (2)" for "three (3)" following "The," "three (3)" for "at least ten (10)" follow-

ing "from a list of" and "any organized and generally recognized group concerned with nursing home administration" for "The Idaho association of licensed nursing homes."

Compiler's Notes.

The words "this act," in subsections (1) and (5), refer to S.L. 1970, ch. 177, which is compiled as §§ 54-1601 to 54-1614.

54-1604. Functions and duties of board — Fee for license applicants — Rules. — (1) It shall be the functions and duties of such board to:

- (a) Develop, impose, and enforce standards consistent with this act which shall be met by individuals in order to receive and retain a license as a nursing home administrator which standard shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;
- (b) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;
- (c) Issue licenses to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;
- (d) Establish and carry out procedures designated to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;
- (e) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board charging that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;
- (f) Conduct a continuing study and investigation of administrators of nursing homes within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such;
- (g) The fee to be paid for any application, license, renewal, permit or registration shall be set by board rule in an amount not to exceed two hundred dollars (\$200).

(2) The board or any committee or member thereof or any hearing officer designated by such board, acting in an official capacity, shall have powers and duties as provided by law.

Such board shall not be bound by the strict rules of evidence in the conduct of its proceedings but any determinations made shall be founded upon sufficient legal evidence to sustain them.

(3) The board shall also have the authority to make rules not inconsistent with law as may be necessary for the proper performance of its duties, and

to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the "social security act," the federal rules promulgated thereunder, and other pertinent federal requirements.

(4) The board shall have the authority to collect from the state association representing nursing homes in Idaho an amount as is necessary to fully reimburse the board for all expenses relating to prelitigation panels conducted pursuant to chapter 23, title 6, Idaho Code. Funds collected by the board pursuant to this subsection shall be deposited into the occupational licenses fund.

History.

1970, ch. 177, § 4, p. 512; am. 1976, ch. 166, § 14, p. 596; am. 1989, ch. 31, § 1, p. 35; am.

1999, ch. 161, § 3, p. 440; am. 1999, ch. 395, § 2, p. 1095; am. 2001, ch. 77, § 3, p. 193.

STATUTORY NOTES**Cross References.**

Military exemption from fees, § 67-2602A.

Prior Laws.

Former § 54-1604 was repealed. See Prior Laws, § 54-1601.

Amendments.

This section was amended by two 1999 acts — ch. 161, § 3 and ch. 395, § 2, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 161, § 3, deleted "and regulations" in the catchline; in subdivision (1)(c), deleted "and registrations"

in two places and deleted "or registration"; in subdivision (1)(g), substituted "renewal of licenses" for "recertification of registration".

The 1999 amendment, by ch. 395, § 2, added current subsection (4).

Federal References.

Section 1908 of the social security act, referred to in subsection (3), is compiled as 42 U.S.C.S. § 1396g.

Compiler's Notes.

The words "this act," in paragraph (1)(a), refer to S.L. 1970, ch. 177, which is compiled as §§ 54-1601 to 54-1614.

54-1605. Qualifications for examination for license. — (1) The board shall admit to examination for licensure as a nursing home administrator any candidate who pays a fee as determined by the board, submits evidence of good moral character and suitability prescribed by the board, and is at least twenty-one (21) years old except that no applicant for license as a nursing home administrator shall be admitted to such licensing examination nor shall such applicant be entitled to or be granted a license as a nursing home administrator unless such applicant shall submit written evidence, on forms provided for such purpose by the board, that he has successfully completed a course of study for a baccalaureate degree and has been awarded such degree from an accredited institution of higher learning or its equivalent as provided in subsection (3) of this section.

(2) Additionally, the applicant shall have completed an administrator-in-training program as described in section 54-1610, Idaho Code.

(3) A candidate who applies for examination under and pursuant to subsection (1) of this section, in lieu of the educational requirements provided for therein, may submit evidence satisfactory to the board that such applicant has obtained two (2) years of satisfactory practical experience in management in a health care facility for each year of required post-high school education.

History.

§ 15, p. 596; am. 1980, ch. 92, § 3, p. 197; am. 1970, ch. 177, § 5, p. 512; am. 1976, ch. 166, 1999, ch. 161, § 4, p. 440.

54-1606. Subject matter of examination — Frequency. — (1) The board shall determine the subjects of examination for applicants for licensure as nursing home administrators and the scope, content, and format of such examinations which in any examination shall be the same for all candidates; except that such examination shall include examination of the applicant to demonstrate his proficiency in the practice of, and knowledge of, applicable rules of health and safety within the state.

(2) Examinations shall be held at least semi-annually at such times and places as the board shall designate.

History.

1970, ch. 177, § 6, p. 512.

54-1607. Issuance of license — Exemption — Educational programs — Administration of federal funds by board. — (1) An applicant for a license as a nursing home administrator who has successfully complied with the requirements of section 54-1605, Idaho Code, and the standards provided for therein, has passed the examination provided for in section 54-1606, Idaho Code, and, where applicable, has complied with the requirements of section 54-1610, Idaho Code, shall be issued a license, on a form provided for that purpose by the board, certifying that such applicant has met the requirements of the laws and rules entitling him to serve, act, practice, and otherwise hold himself out as a duly licensed nursing home administrator; provided, however, nothing in this act or the rules thereunder shall be construed to require an applicant for a license as a nursing home administrator, who is certified by a recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings, to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions.

(2) Any license issued by the board under or pursuant to the provisions of this section shall be under the hand and seal of the chairman and executive secretary of the board.

(3) If the board finds that programs of training and instruction conducted within the state are not sufficient in number or content to enable applicants for nursing home administrators' licenses and nursing home administrators to meet requirements established pursuant to this act, it shall institute and conduct or arrange with others to conduct one (1) or more such programs, and shall make provision for their accessibility to appropriate residents of this state. The board may approve programs conducted within and without this state as sufficient to meet education and training requirements established pursuant to this act. For purposes of this subsection, the board shall have the authority to receive and disburse federal funds received pursuant to requirements of the "social security act."

History.

1970, ch. 177, § 7, p. 512; am. 1999, ch. 161, § 5, p. 440; am. 2001, ch. 77, § 4, p. 193.

STATUTORY NOTES**Federal References.**

The "social security act", referred to at the end of subsection (3), is codified as 42 U.S.C.S. § 301 et seq.

Compiler's Notes.

The words "this act," in subsections (1) and (3), refer to S.L. 1970, ch. 177, which is compiled as §§ 54-1601 to 54-1614.

54-1608. Attendance at continuing education program — Revocation or suspension — Renewal and reinstatement. — (1) Every individual who holds a valid license as a nursing home administrator issued by the board shall annually be required to apply to the board for a renewal of license and report any facts requested by the board on forms provided for such purpose. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) Upon making an application for a renewal of license, each individual shall pay an annual renewal fee and submit evidence satisfactory to the board documenting the attendance and completion of a continuing education program or course of study as may be provided in the rules of the board.

(3) Upon receipt of such application for renewal of license, the license fee, and the evidence required with respect to continuing education, the board shall issue a renewal of license to such nursing home administrator.

(4) The licensed nursing home administrator who fails to comply with the provisions of this section, and who continues to act as a nursing home administrator, shall be subject to discipline by the board, in accordance with the provisions of this act.

History.

1970, ch. 177, § 8, p. 512; am. 1980, ch. 92, § 4, p. 197; am. 1999, ch. 161, § 6, p. 440; am.

2001, ch. 77, § 5, p. 193; am. 2003, ch. 21, § 10, p. 77.

STATUTORY NOTES**Compiler's Notes.**

The words "this act," in subsection (4), refer

to S.L. 1970, ch. 177, which is compiled as §§ 54-1601 to 54-1614.

54-1609. Endorsement of licenses. — The board, in its discretion, and otherwise subject to the provisions of this act, and the rules of the board promulgated thereunder prescribing the qualifications for a nursing home administrator license, may endorse a nursing home administrator license issued by the proper authorities of any other state upon payment of a fee and upon submission of evidence satisfactory to the board that the applicant meets those qualifications established by the rules of the board.

History.

1970, ch. 177, § 9, p. 512; am. 1980, ch. 92,

§ 5, p. 197; am. 2001, ch. 77, § 6, p. 193; am. 2003, ch. 51, § 1, p. 191.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1970, ch. 177, which is compiled as §§ 54-1601 to 54-1614.

54-1610. Administrators-in-training — Examination after one year — Quarterly reports — Exceptions. — (1) Every applicant for a nursing home administrator license who shall have otherwise qualified under the provisions of section 54-1605, Idaho Code, except as provided for in this section, shall serve for a one (1) year period under the direct supervision of a duly licensed nursing home administrator in accordance with the rules of the board. At the expiration of the one-year-in-training period said applicant shall be eligible to take the examination.

(2) The nursing home administrator-in-training shall submit quarterly reports on forms provided therefor by the board.

(3) This section shall not apply to any individual who has successfully completed a course of study for a master's degree in health administration related to long-term care, or who has successfully completed a course of study for a master's degree in health administration and has one (1) year management experience in long-term care and who has been awarded such degree from an accredited institution of higher learning.

(4) Every nursing home administrator-in-training shall register the fact of such training with the board in accordance with the rules and on forms provided by the board.

(5) An applicant may begin the one (1) year nursing home administrator-in-training prior to completion of a baccalaureate degree.

History.

1970, ch. 177, § 10, p. 512; am. 1980, ch. 92, § 6, p. 197; am. 1999, ch. 161, § 7, p. 440; am. 2001, ch. 77, § 7, p. 193; am. 2012, ch. 62, § 1, p. 165.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 62, inserted first sentence in subsection (1) and added subsection (5).
"except as provided for in this section" in the

54-1611. Misdemeanors listed — Penalties. — (1) It shall be a misdemeanor for any person to:

(a) Sell or fraudulently obtain or furnish any license or aid or abet therein; or

(b) Practice as a nursing home administrator under cover of any license illegally or fraudulently obtained or unlawfully issued; or

(c) Practice as a nursing home administrator or use in connection with his or her name any designation tending to imply that he or she is a nursing home administrator unless duly licensed to so practice under the provisions of this act; or

(d) Practice as a nursing home administrator during the time his or her license issued under the provisions of this article shall be suspended or revoked; or

(e) Otherwise violate any of the provisions of this act.

(2) Such misdemeanor shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment.

History.

1970, ch. 177, § 11, p. 512; am. 1999, ch. 161, § 8, p. 440.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" in paragraphs (1)(c)

and (1)(e), refer to S.L. 1970, ch. 177, which is compiled as §§ 54-1601 to 54-1614.

54-1612. Revocation or suspension of license, reprimand, censure, or other discipline. — (1) The license of any person practicing or offering to practice nursing home administration may be revoked or suspended, or such licensee may be reprimanded, censured, or otherwise disciplined in accordance with the provisions of this section upon decision and after due hearing in any of the following cases:

(a) Upon proof that such licensee is reasonably unfit to operate a nursing home.

(b) Upon proof that such licensee has willfully or repeatedly violated any of the provisions of this act or the rules enacted in accordance with, or willfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home in which he is the administrator.

(c) Upon proof that such licensee is guilty of fraud or deceit in the practice of nursing home administration or related activities, or in his or her admission to such practice.

(2) The board, or a hearing officer designated by it shall have jurisdiction to hear all charges brought under the provisions of this section against persons licensed as nursing home administrators, and upon such hearings shall determine such charges upon their merits. If the board determines that such person is guilty of the charges, the board may revoke his or her license, suspend him or her from practice, or reprimand, censure, or otherwise discipline such licensee.

(3) Proceedings under this section shall be initiated by filing with the board, charges in writing and under oath. The board on its own motion may conduct an investigation and initiate charges. The procedures for notification and the hearing on such charges, unless dismissed by the board as unfounded or trivial, shall be conducted pursuant to the provisions of chapter 52, title 67, Idaho Code.

History.

1970, ch. 177, § 12, p. 512; am. 1993, ch.

216, § 68, p. 587; am. 1999, ch. 161, § 9, p. 440.

STATUTORY NOTES**Compiler's Notes.**

The words "this act," in paragraph (1)(b),

refer to S.L. 1970, ch. 177, which is compiled as §§ 54-1601 to 54-1614.

54-1613. Reissuance of revoked license. — (1) The board may, in its discretion, reissue a license to any person whose license has been revoked.

(2) Application for the reissuance of a license shall be made in such manner as the board may direct in accordance with its rules.

History.

1970, ch. 177, § 13, p. 512; am. 1999, ch. 161, § 10, p. 440.

54-1614. Judicial review of board action. — Anyone aggrieved by an action of the board may seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

1970, ch. 177, § 14, p. 512; am. 1993, ch. 216, § 69, p. 587.

54-1615. Annual license fee. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 54-1615, as added by 1970, ch. 177, § 15, p. 512;

am. 1976, ch. 166, § 16, p. 596, was repealed by S.L. 1999, ch. 161, § 11, effective July 1, 1999. See § 54-1604.

54-1616. Disposition of funds. — All fees received under the provision of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account].

History.

1971, ch. 171, § 1, p. 810; am. 1974, ch. 13, § 138, p. 138.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses account, § 67-2602.

compiler to correct the name of the referenced account. See § 67-2605.

Prior Laws.

Former § 54-1616, which comprised S.L. 1970, ch. 177, § 16, was repealed by S.L. 1971, ch. 171, § 2.

Effective Dates.

Section 3 of S.L. 1971, ch. 171 declared an emergency. Approved March 20, 1971.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

Compiler's Notes.

The bracketed insertions were added by the

CHAPTER 17

PHARMACISTS

SECTION.

54-1701. Short title.

54-1702. Legislative declaration.

SECTION.

54-1703. Statement of purpose.

54-1704. Practice of pharmacy.

SECTION.

- 54-1705. Definitions.
- 54-1706. State board of pharmacy established.
- 54-1707. Membership.
- 54-1708. Qualifications of board members.
- 54-1709. Appointment of board members — Notice of vacancy — Nominees.
- 54-1710. Terms of office.
- 54-1711. Vacancies.
- 54-1712. Removal of board members.
- 54-1713. Organization of the board.
- 54-1714. Compensation of board members.
- 54-1715. Meetings of the board.
- 54-1716. Employees.
- 54-1717. Rules and regulations.
- 54-1718. Licensure and discipline.
- 54-1719. Medications — Drugs — Devices — Other materials.
- 54-1720. Other duties — Powers — Authority.
- 54-1721. Unlawful practice.
- 54-1722. Qualifications for licensure by examination.
- 54-1723. Qualifications for licensure by reciprocity.
- 54-1723A. Registration to engage in the practice of telepharmacy across state lines.
- 54-1724. Renewal of licenses.
- 54-1725. Continuing pharmacy education.
- 54-1726. Grounds for discipline.
- 54-1727. Confidentiality of prescriptions and patient information.
- 54-1728. Penalties and reinstatement.
- 54-1729. Registration and licensure of facilities.
- 54-1730. Application procedures.
- 54-1731. Notifications.
- 54-1732. Violations and penalties.
- 54-1733. Validity of prescription drug orders.
- 54-1734. Exceptions.
- 54-1735. Maintenance of records.

SECTION.

- 54-1736. Declaration of common nuisance.
- 54-1737. Burden of proof.
- 54-1738. Proof that a drug is a prescription drug or legend drug.
- 54-1739. Prospective drug review and counseling.
- 54-1740. Short title.
- 54-1741. Legislative declaration.
- 54-1742. Definition — Out-of-state mail service pharmacy.
- 54-1743. License requirements.
- 54-1744. Notifications.
- 54-1745. Inspections.
- 54-1746. Product selection of prescribed drugs.
- 54-1747. Patient communication.
- 54-1748. Violations and penalties.
- 54-1749. Prospective drug review and counseling. [Repealed.]
- 54-1750. Severability. [Repealed.]
- 54-1751. Short title.
- 54-1752. Definitions.
- 54-1753. Wholesale drug distributor licensing requirement — Minimum requirements for licensure.
- 54-1754. Restrictions on transactions.
- 54-1755. Pedigree.
- 54-1756. Enforcement — Order to cease distribution of a drug.
- 54-1757. Discipline — Grounds — Penalties.
- 54-1758. Prohibited acts.
- 54-1759. Penalties.
- 54-1760. Short title.
- 54-1761. Definitions.
- 54-1762. Idaho legend drug donation act.
- 54-1763. Board duties and powers.
- 54-1764. Immunity from liability.
- 54-1765. Exempt from the Idaho wholesale drug distribution act.
- 54-1766 — 54-1769. [Reserved.]
- 54-1770. Notification of drug product selection for epilepsy and seizure drugs.
- 54-1771. Severability.

54-1701. Short title. — This act shall be known as the “Idaho Pharmacy Act.”

History.

I.C., § 54-1701, as added by 1979, ch. 131, § 3, p. 402.

STATUTORY NOTES**Prior Laws.**

In 1978 the Legislature in Chapter 275 (H.B. 480) repealed former Chapter 17 of title 54 and added a new Chapter 17 to title 54. However, there was some question as to the legal status of Chapter 275 which was passed by the House and amended and passed by the Senate. The Senate amendments were con-

cluded in by the House. The version of Chapter 275 sent to and signed by the Governor did not contain the amendments made by the Senate and, thus, was not the bill passed by the House and Senate. Because of this, three versions of Chapter 17 of Title 54 were compiled — (1) A54-17, the version of Chapter 17 of Title 54 that existed prior to the enactment

of Chapter 275; (2) B54-17, the version of Chapter 17, Title 54 that was passed by the House and Senate but not signed by the Governor; (3) C54-17, the version of Chapter 17, Title 54 that was signed by the Governor but not passed by the House and Senate.

In 1979 in Chapter 131 (H.B. No. 184) in § 2 Chapter 17, A, B, and C Title 54 were repealed and Title 54 was amended by the addition of a new Chapter 17. In § 1 of Chapter 131 the Legislature declared "It is the intention of the legislature in adopting this act to remove any ambiguities in the law relating to the practice of pharmacy caused by the inclusion of Chapters A17, B17 and C17 in the compilation of statutes found in title 54, Idaho Code, and to declare that chapter B17, title 54, Idaho Code, was the act passed by the Second Regular Session of the Forty-fourth Legislature."

Therefore, former Chapters A54-17, B54-17 and C54-17 were repealed as follows:

Sections [A54-1701 to A54-1710], which comprised S.L. 1905, p. 319, § 11; reen. R.C. & C.L., § 1389; C.S., § 2172; I.C.A., § 53-2001; S.L. 1939, ch. 62, §§ 1 to 10, p. 110; S.L. 1947, ch. 189, §§ 1, 2, p. 459; am. 1957, ch. 112, § 1, p. 190; am. 1965, ch. 68, § 1, p. 108; am. 1967, ch. 363, §§ 1 to 6, p. 1043; am. 1971, ch. 39, § 1, p. 87; am. 1974, ch. 13, §§ 139 to 141, p. 138; am. 1976, ch. 111, § 1, p. 439; am. 1976, ch. 139, § 1, p. 514 were repealed by S.L. 1979, ch. 131, § 2.

Section [A54-1711], which comprised C.S., § 2173a, as added by 1921, ch. 175, § 1, p. 370; I.C.A., § 53-2003, was repealed by S.L. 1965, ch. 68, § 2.

Sections [A54-1712, A54-1713], which comprised S.L. 1905, p. 319, § 2; compiled and reen. R.C., § 1391; reen. C.L., § 1391; C.S., §§ 2174, 2175, subd. a as added by 1925, ch. 39, § 1, p. 52; I.C.A., §§ 53-2004, 53-2005; S.L. 1939, ch. 116, § 1, p. 199; am. 1965, ch. 68, § 3, p. 108; am. 1967, ch. 363, §§ 7, 8, p. 1043; am. 1976, ch. 136, § 1, p. 510 were repealed by S.L. 1979, ch. 131, § 2.

Section [A54-1714], which comprised C.S. § 2175, subd. b, as added by 1925, ch. 39, § 1, p. 52; I.C.A., § 53-2006, was repealed by S.L. 1965, ch. 68, § 4, p. 108.

Sections [A54-1715 to A54-1719], which comprised 1905, p. 319, §§ 4, 6, 14, 15; compiled and reen. R.C., § 1393; reen. C.L., § 1393; reen. R.C. & C.L., §§ 1395 to 1397; C.S., §§ 2176, 2178 to 2180; C.S., § 2177 as added by 1925, ch. 39, § 2; I.C.A., §§ 53-2007 to 53-2011; am. 1957, ch. 112, § 2, p. 190; 1965, ch. 68, §§ 5 to 8, p. 108; 1967, ch. 363, §§ 9, 10, p. 1043; 1971, ch. 41, § 1, p. 88; 1976, ch. 138, § 1, p. 512 were repealed by S.L. 1979, ch. 131, § 2.

Section [A54-1720], which comprised S.L. 1905, p. 319, § 13 and last sentence of § 4; compiled and reen. R.C., § 1398; am. 1913, ch. 53, § 1, p. 162; reen. C.L., § 1398; C.S., § 2181; I.C.A., § 53-2012; am. 1957, ch. 27, § 1, p. 34, was repealed by S.L. 1967, ch. 363, § 11.

Sections [A54-1721 to A54-1726], which comprised S.L. 1905, p. 319, §§ 12, 16; reen. R.C. & C.L., § 1399; reen. R.C., § 1400; compiled and reen. C.L., § 1400; C.S., §§ 2182, 2183; S.L. 1925, ch. 23, §§ 1, 2, p. 33; 1925, ch. 39, § 4, p. 52; I.C.A., §§ 53-2013 to 53-2017; am. 1965, ch. 68, § 9, p. 108; am. 1967, ch. 363, §§ 12 to 16, p. 1043, were repealed by S.L. 1979, ch. 131, § 2.

Sections, which comprised I.C., §§ B54-1701 to B54-1739, as added by 1978, ch. 275 [No. 1], § 2, p. 640, were repealed by S.L. 1979, ch. 131, § 2.

Sections, which comprised I.C., §§ C54-1701 to C54-1738, as added by 1978, ch. 275 [No. 2], § 2, p. 640, were repealed by S.L. 1979, ch. 131, § 2.

Compiler's Notes.

The words "this act" refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

RESEARCH REFERENCES

Am. Jur. — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 89.

C.J.S. — 28 C.J.S., Drugs and Narcotics, §§ 14 to 21, 65 et seq.

A.L.R. — Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotics or stimulant drugs. 17 A.L.R.3d 1408.

Civil liability of druggist for injuries sustained as result of negligence in incorrectly filling drug prescription. 3 A.L.R.4th 270.

Civil liability of pharmacist or druggists for failure to warn of potential drug interactions in use of prescription drug. 79 A.L.R.5th 409.

54-1702. Legislative declaration. — The practice of pharmacy in the state of Idaho is declared a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the

public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in this chapter, merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in the state of Idaho. This act shall be liberally construed to carry out these objects and purposes.

History.

I.C., § 54-1702, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES**Compiler's Notes.**

The words "this act," in the last sentence, refer to S.L. 1979, ch. 131, which is compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726,

54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1703. Statement of purpose. — It is the purpose of this act to promote, preserve and protect the health, safety and welfare of the public by and through the effective control and regulation of the practice of pharmacy and of the registration of drug outlets engaged in the manufacture, production, sale and distribution of drugs, medications, devices and such other materials as may be used in the diagnosis and treatment of injury, illness and disease.

History.

I.C., § 54-1703, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" refer to S.L. 1979, ch. 131, which is compiled as §§ 54-1701 to 54-

1723, 54-1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1704. Practice of pharmacy. — "Practice of pharmacy" means the interpretation, evaluation and dispensing of prescription drug orders; participation in drug and device selection, drug administration, drug regimen reviews and drug or drug-related research; the practice of telepharmacy within and across state lines; provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care; and the responsibility for: compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager or distributor of nonprescription drugs and commercially packaged legend drugs and devices; proper and safe storage of drugs and devices, and maintenance of proper records for them; and the offering or performing of those acts, services, operations or transactions necessary to the conduct, operation, management and control of pharmacy. Licensed pharmacists may prescribe dietary fluoride supplements when prescribed according to the American dental association's recommendations for persons whose drinking water is proven to have a fluoride content below the United States department of health and human services' recommended concentration. Licensed pharma-

cists may also prescribe agents for active immunization when prescribed for susceptible persons twelve (12) years of age or older for the protection from communicable disease.

History.

I.C., § 54-1704, as added by 1979, ch. 131, § 3, p. 402; am. 1992, ch. 179, § 1, p. 564; am.

1993, ch. 49, § 1, p. 126; am. 2009, ch. 244, § 2, p. 748; am. 2011, ch. 264, § 1, p. 709.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 244, inserted "the practice of telepharmacy within and across state lines" near the middle of the section.

The 2011 amendment, by ch. 264, added the last two sentences.

Compiler's Notes.

For more on fluoride content of drinking water, see <http://www.cdc.gov/fluoridation>.

54-1705. Definitions. — In this chapter:

(1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Counseling" or "counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription medications and devices. Specific areas of counseling shall include, but are not limited to:

- (a) Name and strength and description of the medication;
- (b) Route of administration, dosage, dosage form, continuity of therapy and refill information;
- (c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;
- (d) Side effects or adverse effects and interactions and therapeutic contraindications that may be encountered, including their avoidance, which may interfere with the proper use of the medication or device as was intended by the prescriber, and the action required if they occur;
- (e) Techniques for self-monitoring drug therapy; and
- (f) Action to be taken in the event of a missed dose.

(3) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration.

(4) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar related article including any component part or accessory which is:

- (a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;
- (b) Intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment or prevention of disease in man or other animal;
- (c) Intended to affect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other

animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(5) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(6) "Distribute" means the delivery of a drug other than by administering or dispensing.

(7) "Drug" means:

(a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(8) "Drug order" means an order for a patient of an institutional facility, or for other purposes when permitted by board rules that contains at least the name of the patient; date of issuance; the drug name, strength, and route of administration; directions for use; the name of the prescribing practitioner and, if written, the prescribing practitioner's signature or the signature of the practitioner's agent.

(9) "Drug outlets" means all pharmacies and other facilities with employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices.

(10) "Extern" means a bona fide student enrolled in an approved college of pharmacy who has not received his first professional degree in pharmacy.

(11) "Externship" means a structured practical experience program in pharmacy, approved by the board and administered by a college of pharmacy.

(12) "Institutional facility" means a facility for which its primary purpose is to provide a physical environment for patients to obtain health care services and in which patients spend a majority of their time, as may be further defined by board rules.

(13) "Intern" means any person who has completed a course of study at an approved college of pharmacy, received the first professional degree in pharmacy and is registered with the board as an intern. Interns must register with the board prior to commencement of an internship program.

(14) "Internship" means a postgraduate practical experience program under the supervision of a preceptor at a preceptor site.

(15) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(16) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer,

packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation.

(17) "Limited service outlet" means a facility that is subject to registration or licensure by the board, pursuant to section 54-1729(3), Idaho Code, in that it has employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices but is not a retail pharmacy, institutional facility, manufacturer, wholesaler, veterinary drug outlet, telepharmacy across state lines or mail service pharmacy.

(18) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a pharmacist or practitioner as an incident to his administering or dispensing of a drug in the course of his professional practice; or

(b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(19) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

(20) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

(21) "Person" means an individual, corporation, partnership, association or any other legal entity.

(22) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

(23) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy or a pharmacist licensed in another state who is registered by the board of pharmacy to engage in the practice of telepharmacy across state lines.

(24) "Pharmacy" means any facility, department or other place where prescriptions are filled or compounded and are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

(25) "Practice of telepharmacy" means the provision of pharmaceutical care by registered or licensed pharmacies and pharmacists located within United States jurisdictions through the use of telecommunications or other technologies to patients at distances that are located within United States jurisdictions, as defined in the rules of the board.

(26) "Practice of telepharmacy across state lines" means the practice of telepharmacy when the patient is located within the state of Idaho and the pharmacist is located in a United States jurisdiction outside the state of Idaho, as defined in the rules of the board.

(27) "Practitioner" means a person licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(28) "Precursor" means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(29) "Preceptor" means a pharmacist licensed in the state and in good standing, who supervises the internship training of a registered intern. The preceptor shall be actively engaged in the practice of pharmacy on a full-time employment basis at a registered preceptor site.

(30) "Preceptor site" means any training site for pharmacy interns and externs registered with the board pursuant to board rule.

(31) "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements:

- (a) "Caution: Federal law prohibits dispensing without a prescription"; or
- (b) "Rx Only"; or
- (c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";

or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(32) "Prescription drug order" means a lawful written or verbal order of a practitioner for a drug or device for an ultimate user of the drug or device, issued and signed by a practitioner, or an order transmitted verbally from a practitioner or the practitioner's agent to a pharmacist in a pharmacy, or transmitted verbally from a practitioner and immediately reduced to writing by a licensed practical nurse or licensed professional nurse in an institutional facility for a patient or resident of such facility.

(33) "Prospective drug review" includes, but is not limited to, the following activities:

- (a) Evaluation of the prescription or medication order for:
 - (i) Known allergies;
 - (ii) Rational therapy contraindications;
 - (iii) Reasonable dose and route of administration; and

- (iv) Reasonable directions for use.
 - (b) Evaluation of the prescription or medication order for duplication of therapy.
 - (c) Evaluation of the prescription or medication order for interactions:
 - (i) Drug-drug;
 - (ii) Drug-food; and
 - (iii) Drug-disease.
 - (d) Evaluation of the prescription or medication order for proper utilization:
 - (i) Over or under utilization; and
 - (ii) Abuse/misuse.
- (34) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.
- (35) "Sale" means every sale and includes:
- (a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;
 - (b) Exposure, offer, or any other proffer;
 - (c) Holding, storing or any other possession;
 - (d) Dispensing, giving, delivering or any other supplying; and
 - (e) Applying, administering or any other usage.
- (36) "Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage.
- (37) "Wholesaler" means a person engaged in the business of distributing legend drugs that he himself has not produced or prepared, to persons included in any of the classes named in subsection (2)(a) through (f) of section 54-1734, Idaho Code.

History.

I.C., § 54-1705, as added by 1979, ch. 131, § 3, p. 402; am. 1989, ch. 193, § 14, p. 475; am. 1992, ch. 179, § 2, p. 564; am. 1993, ch. 49, § 2, p. 126; am. 2000, ch. 103, § 1, p. 227;

am. 2000, ch. 274, § 132, p. 799; am. 2002, ch. 26, § 1, p. 29; am. 2006, ch. 290, § 1, p. 888; am. 2008, ch. 51, § 1, p. 124; am. 2009, ch. 244, § 3, p. 748; am. 2011, ch. 135, § 2, p. 375.

STATUTORY NOTES

Amendments.

This section was amended by two 2000 acts — ch. 103, § 1 and ch. 274, § 132, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 103, § 1, inserted "(1)" following "one" in subsection (3); substituted "rules" for "regulations" in subsection (21); substituted "one" for "either" in the introductory language of subsection (26); added subdivision (26)(b); redesignated former subdivision (26)(b) as present subdivision (26)(c), and made related changes.

The 2000 amendment, by ch. 274, § 132,

inserted "(1)" following "one" in subsection (3); substituted "or assisted living facilities" for "care homes" in subsection (9); in subsection (26), inserted "one" preceding "of the following" in the introductory language and made related changes.

The 2006 amendment, by ch. 290, added "In this chapter" at the beginning; deleted former subsection (10), which read: "Prospective drug review" includes, but is not limited to, the following activities:

"(a) Evaluation of the prescription or medication order for:

1. Known allergies;

2. Rational therapy contraindications;
3. Reasonable dose and route of administration; and
4. Reasonable directions for use.

“(b) Evaluation of the prescription or medication order for duplication of therapy.

“(c) Evaluation of the prescription or medication order for interactions:

1. Drug-drug;
2. Drug-food; and
3. Drug-disease.

“(d) Evaluation of the prescription or medication order for proper utilization:

1. Over or under utilization; and
2. Abuse/misuse.”;

redesignated former subsections (11) and (12) as present subsections (10) and (11); added present subsection (12); rewrote subsection (19), which formerly read: “‘Precursor’ means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.”; added subsection (25), and made related redesignations; deleted former subsection (29), which read: “‘Nonprescription drugs’ means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.”; in present subsection (29) (former subsection (28)), added the language beginning “or device for an ultimate user of the drug or device”; added subsection (30), and made related redesignations.

The 2008 amendment, by ch. 51, deleted “other than a pharmacist” following “investigator or other person” in subsection (24).

The 2009 amendment, by ch. 244, in subsection (9) added “and institutions, as defined in the rules of the board, engaged in the practice of telepharmacy across state lines” at the end; in subsection (22), added “or a pharmacist licensed in another state who is registered by the board of pharmacy to engage in the practice of telepharmacy across state lines”; added subsections (25) and (26) and redesignated subsections (25) through (34) as (27) through (36).

The 2011 amendment, by ch. 135, rewrote subsections (8) and (9); rewrote subsection (12), which formerly defined “Health care facility”; added subsection (17) and redesignated the subsequent subsections accordingly; in present subsection (27), deleted “physician, dentist, veterinarian, scientific investigator or other” preceding “person licensed in this state”; and, in subsection (32), substituted “an institutional facility” for “a health care facility.”

Compiler’s Notes.

The United States Pharmacopoeia, referred to in paragraphs (4)(a) and (7)(a), is a non-governmental official public standards-setting authority for prescription and over-the-counter medicines. See <http://www.usp.org>.

The National Formulary, referred to in paragraphs (4)(a) and (7)(a), contains standards for medicines, dosage forms, drug substances, excipients, medical devices, and dietary supplements. See <http://www.usp.org/USPNF>.

The Homeopathic Pharmacopoeia of the United State, referred to in paragraph (7)(a), is the official compendium for homeopathic drug in the United States. See <http://hpus.com>.

Effective Dates.

Section 6 of S.L. 2006, ch. 290 declared an emergency. Approved March 31, 2006.

54-1706. State board of pharmacy established. — There is hereby established in the department of self-governing agencies a state board of pharmacy whose responsibilities shall be to enforce the provisions of this act. The board shall have all of the duties, powers and authority specifically granted by and necessary to the enforcement of this act, as well as such other duties, powers and authority as it may be granted from time to time by appropriate statute.

History.

I.C., § 54-1706, as added by 1979, ch. 131, § 3, p. 402.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601.

131, which is compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

Compiler's Notes.

The words "this act" refer to S.L. 1979, ch.

54-1707. Membership. — The board of pharmacy shall consist of five (5) members. One (1) member shall be a representative of the public, and four (4) members shall be licensed pharmacists who possess the qualifications specified in section 54-1708, Idaho Code.

History.

I.C., § 54-1707, as added by 1979, ch. 131,
§ 3, p. 402.

54-1708. Qualifications of board members. — (1) The public member of the board of pharmacy shall be a resident of the state of Idaho who has attained the age of majority and shall not be nor shall he ever have been a member of the profession of pharmacy, the spouse of a member of the profession of pharmacy, or a person who has or has had a material financial interest in providing pharmacy service or any other activity directly related to the practice of pharmacy.

(2) The pharmacist members of the board of pharmacy shall at the time of their appointment and at all times thereafter:

- (a) Be residents of the state of Idaho;
- (b) Be licensed and in good standing to engage in the practice of pharmacy in the state of Idaho;
- (c) Be engaged in the practice of pharmacy in the state of Idaho;
- (d) Have five (5) years of experience in the practice of pharmacy in the state of Idaho after licensure.

History.

I.C., § 54-1708, as added by 1979, ch. 131,
§ 3, p. 402.

54-1709. Appointment of board members — Notice of vacancy — Nominees. — Prior to the expiration of the regular term of a member of the board or upon the occurrence of declaration of a vacancy in the membership of the board, the governor shall notify in writing the Idaho State Pharmacy Association, Inc. thereof, and the association shall, within thirty (30) days thereafter, nominate three (3) qualified persons to fill such vacancy and shall forthwith forward the nominations to the governor, who may thereupon appoint from such nominees, the person to be a member of the board to fill such vacancy. If the association shall fail to furnish to the governor the names of nominees to fill a vacancy within the time herein provided, the governor may appoint any person otherwise qualified to fill said vacancy.

History.

I.C., § 54-1709, as added by 1979, ch. 131,
§ 3, p. 402; am. 1997, ch. 22, § 1, p. 31.

STATUTORY NOTES**Compiler's Notes.**

For more on Idaho state pharmacy association, see <http://www.idahopharmacists.com>.

54-1710. Terms of office. — (1) Except as provided in subsection (2) of this section, members of the board of pharmacy shall be appointed for a term of five (5) years, except that members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

(2) The terms of the members of the board shall be staggered, so that the terms of no more than one (1) member shall expire in any year. The present members of the board shall serve the balance of their terms. Any present board member appointed initially for a term of less than five (5) years shall be eligible to serve for two (2) additional full terms.

(3) No member of the board shall serve more than (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

(4) An appointee to a full term on the board shall be appointed by the governor as provided in section 54-1709, Idaho Code, and be effective on July 1 of the year of appointment. Appointees to unexpired portions of full terms shall become members of the board upon appointment.

(5) In order to provide for the appointment of the public member of the board, the term expiring on June 30, 1978, is hereby designated as the term of the public member, who shall be appointed to a term commencing July 1, 1978.

History.

I.C., § 54-1710, as added by 1979, ch. 131,
§ 3, p. 402.

54-1711. Vacancies. — Any vacancy which occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability or disqualification, shall be filled by the governor in the manner prescribed in section 54-1709, Idaho Code. The governor shall fill vacancies which occur by expiration of full terms within thirty (30) days prior to each date of expiration, and shall fill vacancies which occur for any other reason within sixty (60) days after such vacancy occurs.

History.

I.C., § 54-1711, as added by 1979, ch. 131,
§ 3, p. 402.

54-1712. Removal of board members. — The governor may remove any member of the board from membership on the board who is found by the governor to be mentally or physically incapable of acting, or to be neglecting

or refusing to act, or who ceases to have the qualifications of a member as provided in this act.

History.

I.C., § 54-1712, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES

Compiler's Notes.

The words "this act," at the end of the section, refer to S.L. 1979, ch. 131, which is compiled as §§ 54-1701 to 54-1723, 54-1724

to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1713. Organization of the board. — (1) The board of pharmacy shall elect from its members a chairman and such other officers as it deems appropriate and necessary to the conduct of its business. The chairman of the board of pharmacy shall preside at all meetings of the board and shall be responsible for the performance of all of the duties and functions of the board required or permitted by this act. Each additional officer elected by the board shall perform those duties normally associated with his position and such other duties assigned to him from time to time by the board.

(2) Officers elected by the board shall serve terms of one (1) year commencing with the day of their election, and ending upon election of their successors and shall serve no more than one (1) consecutive full term in each office to which they are elected.

(3) The board shall employ a licensed pharmacist who shall be an ex officio member of the board without vote to serve as a full-time employee of the board in the position of executive director. The executive director shall be responsible for the performance of the regular administrative functions of the board and such other duties as the board may direct.

History.

I.C., § 54-1713, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES

Compiler's Notes.

The words "this act," in subsection (1), refer to S.L. 1979, ch. 131, which is compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726,

54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1714. Compensation of board members. — (1) Each member of the board of pharmacy shall be compensated as provided by section 59-509(n), Idaho Code, for each day on which the member is engaged in performance of the official duties of the board, and reimbursement for all expenses incurred in connection with the discharge of such official duties.

(2) The executive director of the board of pharmacy shall be a nonclassified officer and shall receive, as compensation, an annual salary payable on regular pay periods, the amount of which shall be determined by the board,

and reimbursement for all expenses incurred in connection with performance of his official duties.

History.

I.C., § 54-1714, as added by 1979, ch. 131,
§ 3, p. 402; am. 1980, ch. 247, § 63, p. 582;

am. 1982, ch. 260, § 1, p. 670; am. 1996, ch.
237, § 2, p. 766.

54-1715. Meetings of the board. — (1) The board of pharmacy shall meet at least once every six (6) months to transact its business. One such meeting held during each fiscal year of the state shall be designated as the annual meeting and shall be for the purpose of electing officers and for the reorganization of the board. The board shall meet at such additional times as it may determine. Such additional meetings may be called by the chairman of the board or by three (3) of the members of the board.

(2) The board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate subsequent notice.

(3) Notice of all meetings of the board shall be given in the manner and pursuant to requirements prescribed by the state's applicable statutes, rules and regulations.

(4) A majority of the members of the board shall constitute a quorum for the conduct of a board meeting and, except where a greater number is required by the act, or by any rule or regulation of the board, all actions of the board shall be by a majority of a quorum.

(5) All meetings and hearings of the board shall be conducted in compliance with the provisions of sections 67-2340 through 67-2347, Idaho Code.

History.

I.C., § 54-1715, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES**Compiler's Notes.**

The term "the act" in subsection (4) refers to S.L. 1979, ch. 131, which is compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726,

54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1716. Employees. — (1) The board of pharmacy may, in its discretion, employ persons in addition to the executive director in such other positions or capacities as it deems necessary to the proper conduct of board business and to the fulfillment of the board's responsibilities as defined by this act.

(2) The employees of the board other than the executive director and the board's chief controlled substance investigator under chapter 27, title 37, Idaho Code, shall be classified employees and shall receive, as compensation, an annual salary payable on regular pay periods, the amount of which shall be determined by the personnel commission classification and compensation plan set forth in section 67-5309, Idaho Code, and reimbursement

for all expenses incurred in connection with performance of their official duties.

History.

I.C., § 54-1716, as added by 1979, ch. 131, § 3, p. 402; am. 2000, ch. 353, § 1, p. 1187.

STATUTORY NOTES**Compiler's Notes.**

The words "this act," in subsection (1), refer to S.L. 1979, ch. 131, which is compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

Effective Dates.

Section 2 of S.L. 2000, ch. 353, declared an emergency. Approved April 14, 2000.

54-1717. Rules and regulations. — The board of pharmacy shall make, adopt, amend and repeal such rules and regulations as may be deemed necessary by the board, from time to time, for the proper administration and enforcement of this act. Such rules and regulations shall be promulgated in accordance with the procedures specified in Chapter 52, Title 67, Idaho Code, the administrative procedures act.

History.

I.C., § 54-1717, as added by 1979, ch. 131, § 3, p. 402.

STATUTORY NOTES**Compiler's Notes.**

The words "this act," in the first sentence, refer to S.L. 1979, ch. 131, which is compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726,

54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1718. Licensure and discipline. — (1) The board of pharmacy shall be responsible for the control and regulation of the practice of pharmacy in this state including, but not limited to, the following:

- (a) The licensing by examination or by reciprocity of applicants who are qualified to engage in the practice of pharmacy under the provisions of this act;
 - (b) The renewal of licenses to engage in the practice of pharmacy;
 - (c) The determination and issuance of standards for recognition and approval of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training, including internship;
 - (d) The enforcement of the provisions of this act relating to the conduct or competence of pharmacists practicing in this state, and the suspension, revocation or restriction of licenses to practice pharmacy;
 - (e) The regulation of the training, qualifications and employment of pharmacy interns.
- (2) The board of pharmacy shall require all applicants for original licensure or registration and for reinstatement of licenses or registrations to

submit to a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each applicant for original licensure or registration or for reinstatement of licensure or registration shall submit a completed ten (10) finger fingerprint card or scan to the board of pharmacy at the time of application and shall pay the cost of the criminal history check.

History.

I.C., § 54-1718, as added by 1979, ch. 131,
§ 3, p. 402; am. 2010, ch. 63, § 1, p. 112.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 63, added subsection (2).

Compiler's Notes.

The words "this act," in paragraphs (1)(a) and (1)(d), refer to S.L. 1979, ch. 131, which is compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

The Idaho central criminal history database, referred to in the first sentence in sub-

section (2), is the state's central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.idaho.gov/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in the first sentence in subsection (2), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjisdliafis.htm>.

54-1719. Medications — Drugs — Devices — Other materials. —

The board of pharmacy shall also have the following responsibilities in regard to medications, drugs, devices and other materials used in this state in the diagnosis, mitigation and treatment or prevention of injury, illness and disease:

(1) The regulation of the sale at retail and the dispensing of medications, drugs, devices and other materials, including the method of dispensing in institutional facilities, and including the right to seize such drugs, devices and other materials found to be detrimental to the public health and welfare by the board after appropriate hearing as required under the administrative procedures act;

(2) The specifications of minimum professional and technical equipment, environment, supplies and procedures for the compounding and/or dispensing of such medications, drugs, devices and other materials within the practice of pharmacy;

(3) The control of the purity and quality of such medications, drugs, devices and other materials within the practice of pharmacy;

(4) The issuance and renewal of certificates of registration of drug outlets for purposes of ascertaining those persons engaged in the manufacture and distribution of drugs.

History.

I.C., § 54-1719, as added by 1979, ch. 131,
§ 3, p. 402; am. 1990, ch. 144, § 1, p. 324.

STATUTORY NOTES

Compiler's Notes.

The administrative procedures act, referred to in subdivision (1) of this section, is compiled as § 67-5201 et seq.

54-1720. Other duties — Powers — Authority. — The board of pharmacy shall have such other duties, powers, and authority as may be necessary to the enforcement of this act and to the enforcement of board rules made pursuant thereto, which shall include, but are not limited to, the following:

(1) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board.

(2) In addition to any statutory requirements, the board may require such surety bonds as it deems necessary to guarantee the performance and discharge of the duties of any officer or employee receiving and disbursing funds.

(3) The executive director of the board shall keep the seal of the board and shall affix it only in such manner as may be prescribed by the board.

(4) On or before the 60th day after the last day of each state fiscal year, the board shall submit to the governor a report summarizing its proceedings and activities during that fiscal year, together with a report of all moneys received and disbursed by the board. Such reports or comprehensive summaries or abstracts thereof, as determined by the board shall be made available to the public.

(5)(a) The board shall determine within thirty (30) days prior to the beginning of each state fiscal year the fees to be collected for:

1. Examinations and reexaminations, which fee shall not exceed two hundred fifty dollars (\$250);

2. The issuance of licenses, which fee shall not exceed two hundred fifty dollars (\$250);

3. The issuance of certificates of registration and renewal certificates of registration, which fee shall not exceed one hundred dollars (\$100), except in the case of out-of-state mail service pharmacies licensed pursuant to section 54-1743, Idaho Code, in which case the fee shall not exceed two hundred fifty dollars (\$250); and

4. The certification of approved providers of continuing education courses, which fee shall not exceed three hundred dollars (\$300).

(b) All fees or fines which shall be paid under the provisions of this act shall be paid over by the board to the treasurer of the state of Idaho, and shall be held by the state treasurer in the pharmacy account, which shall be paid out by the state treasurer upon warrant drawn by the state controller against said account. The state controller is hereby authorized, upon presentation of the proper vouchers of claims against the state, approved by the said board and the state board of examiners, as provided by law, to draw his warrant upon said account.

(6) The board may receive and expend moneys in addition to its annual appropriations, from parties other than the state, provided:

- (a) Such moneys are awarded for the pursuit of a specific objective which the board is authorized to accomplish by this act, or which the board is qualified to accomplish by reason of its jurisdiction or professional expertise;
 - (b) Such moneys are expended for the pursuit of the objective for which they are awarded;
 - (c) Activities connected with or occasioned by the expenditures of such moneys do not interfere with or impair the performance of the board's duties and responsibilities and do not conflict with the exercise of the board's powers as specified by this act;
 - (d) Such moneys are kept in a separate, special state account; and
 - (e) Periodic reports are made to the administrator, division of budget, policy planning and coordination [division of financial management], concerning the board's receipt and expenditure of such moneys.
- (7) The board shall assign to each drug outlet under its jurisdiction, a uniform state number, coordinated where possible with all other states which adopt the same uniform numbering system.
- (8) The board or its authorized representatives shall also have power to investigate and gather evidence concerning alleged violations of the provisions of this act or of the rules of the board.
- (9)(a) Notwithstanding anything in this act to the contrary, whenever a duly authorized representative of the board finds or has probable cause to believe that any drug, or device is adulterated or misbranded within the meaning of the Idaho food, drug and cosmetic act, he shall affix to such drug or device a tag or other appropriate marking giving notice that such article is or is suspected of being adulterated or misbranded, has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board, its agent or the court. No person shall remove or dispose of such embargoed drug or device by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been instituted, without permission from the court.
- (b) When a drug or device detained or embargoed under paragraph (a) of this subsection (9) has been declared by such representative to be adulterated or misbranded, the board shall, as soon as practical thereafter, petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated or misbranded, the board shall direct the immediate removal of the tag or other marking.
- (c) If the court finds the detained or embargoed drug or device is adulterated or misbranded, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage and other proper expense shall be borne by the owner of such drug or device. When the adulteration or misbranding can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and

sufficient bond has been posted, may direct that such drug or device be delivered to the owner thereof for such labeling or processing under the supervision of a board representative. Expense of such supervision shall be paid by the owner. Such bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid.

(d) It is the duty of the attorney general to whom the board reports any violation of this subsection to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. Nothing in this subsection (9) shall be construed to require the board to report violations whenever the board believes the public's interest will be adequately served in the circumstances by a suitable written notice or warning.

(10) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers and authority in accordance with the administrative procedures act.

(11)(a) For the purpose of any proceedings held before the board as authorized by law, including the refusal, nonrenewal, revocation or suspension of licenses, registrations or certifications authorized by this act, or the imposition of fines or reprimands on persons holding such licenses, certification or registrations, the board may subpoena witnesses and compel their attendance, and may also at such time require the production of books, papers, documents or other memoranda. In any such proceeding before the board, any member of the board, or its designee, may administer oaths or affirmations to witnesses so appearing.

(b) If any person shall refuse to obey a subpoena so issued, or refuse to testify or produce any books, papers or documents called for by said subpoena, the board may make application to the district court of the county in which the proceeding is held, for an order of the court requiring the person to appear before the court, and to show cause why the person should not be compelled to testify, to produce such books, papers, memoranda or other documents required by the subpoena, or otherwise comply with its terms. The application shall set forth the action theretofore taken by the board to compel the attendance of the witness, the circumstances surrounding the failure of the witness to attend or otherwise comply with the subpoena, together with a brief statement of the reasons why compliance with the subpoena is necessary to the proceeding before the board.

(c) Upon the failure of a person to appear before the court at the time and place designated by it, the court may enter an order without further proceedings requiring the person to comply with the subpoena. Any person failing or refusing to obey such order of the court shall be punished for contempt of court as in other cases provided.

History.

I.C., § 54-1720, as added by 1979, ch. 131, § 3, p. 402; am. 1980, ch. 354, § 1, p. 915; am. 1985, ch. 152, § 2, p. 405; am. 1994, ch. 180, § 100, p. 420; am. 1994, ch. 348, § 1, p. 1104.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.
Contempts, § 7-601 et seq.
State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.

Amendments.

This section was amended by two 1994 acts — ch. 180, § 100, effective January 2, 1995, and ch. 348, § 1, effective July 1, 1994 — which do not appear to conflict and have been compiled together.

The 1994 amendment, by ch. 180, § 100, in the first and second sentences of subdivision (5)(b) substituted “controller” for “auditor” following “state”.

The 1994 amendment, by ch. 348, § 1, in the introductory paragraph deleted “and regulations” following “rules”; added the language at the end of subdivision (5)(a)3. beginning with “, except in the case” and ending with “(\$250)”; and near the end of subdivision (8) deleted “and regulations” following “rules”.

Compiler's Notes.

The words “this act,” in the introductory paragraph and in paragraphs (5)(b), (6)(a), (6)(c), subsection (8) and paragraph (9)(a), refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to “this chapter”.

The words “this act,” in paragraph (11)(a), were added by S.L. 1980, chapter 354, which is codified as this section.

Probably both references to “this act” should be to “this chapter”.

The bracketed insertion in paragraph (6)(e) was added by the compiler as the division of budget, policy planning and coordination was changed to the division of financial management by S.L. 1980, ch. 358, § 2. See § 67-1910.

The Idaho food, drug and cosmetic act, referred to in subsection (9)(a) of this section, is compiled as §§ 37-113 to 37-134.

The administrative procedures act, referred to in subsection (10) of this section, is compiled as § 67-5201 et seq.

Effective Dates.

Section 2 of S.L. 1980, ch. 354 declared an emergency. Approved April 4, 1980.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 100 of S.L. 1994, ch. 180 became effective January 2, 1995.

54-1721. Unlawful practice. — (1) It shall be unlawful for any person to engage in the practice of pharmacy unless licensed to so practice under the provisions of this act; provided, however, physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of this state may deliver and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this state.

(2) Notwithstanding the provisions of subsection (1) of this section and any statute or rule to the contrary, persons who hold a valid and current license to practice practical or professional nursing in this state pursuant to sections 54-1407, 54-1408 and 54-1418, Idaho Code, and who are employed by one (1) of the public health districts established under section 39-408, Idaho Code, shall be permitted to engage in the labeling and delivery of refills of the following prepackaged items when such items have been prescribed to a patient by a licensed physician, licensed physician's assistant or licensed advanced practice nurse:

- (a) Prenatal vitamins;
- (b) Contraceptive medications approved by the United States food and drug administration;
- (c) Antiviral medications approved by the United States centers for

disease control and prevention for treatment of sexually transmitted infection; and

(d) Medications approved by the United States centers for disease control and prevention for treatment of active and latent tuberculosis.

(3) It shall be unlawful for any person, not legally licensed as a pharmacist, to take, use or exhibit the title of pharmacist or the title of druggist or apothecary, or any other title or description of like import.

(4) Any person who shall be found to have unlawfully engaged in the practice of pharmacy shall be subject to a fine not to exceed three thousand dollars (\$3,000) for each offense. Each such violation of this act or the rules promulgated hereunder pertaining to unlawfully engaging in the practice of pharmacy shall also constitute a misdemeanor punishable upon conviction as provided in the criminal code of this state.

History.

I.C., § 54-1721, as added by 1979, ch. 131,
§ 3, p. 402; am. 2010, ch. 346, § 1, p. 904.

STATUTORY NOTES

Cross References.

Punishment for misdemeanor not otherwise specified, § 18-113.

Amendments.

The 2010 amendment, by ch. 346, added subsection (2) and redesignated the subsequent subsections accordingly; and in the second sentence in subsection (4), deleted "and regulations" following "rules."

Compiler's Notes.

The words "this act," in subsections (1) and (4), refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1722. Qualifications for licensure by examination. — (1) To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination shall:

(a) Have submitted a written application in the form prescribed by the board of pharmacy.

(b) Have attained the age of majority.

(c) Be of good moral character and temperate habits.

(d) Have graduated and received the first professional undergraduate degree from a school or college of pharmacy which has been approved by the board of pharmacy.

(e) Have completed an internship or other program which has been approved by the board of pharmacy, or demonstrated to the board's satisfaction experience in the practice of pharmacy which meets or exceeds the minimum internship requirements of the board.

(f) Have successfully passed an examination given by the board of pharmacy.

(g) Paid the fees specified by the board of pharmacy for examination and issuance of license.

(2) Examinations.

(a) The examination for licensure required under section 54-1722(1)(f), Idaho Code, shall be given by the board at least two (2) times during each

fiscal year of the state. The board shall determine the content and subject matter of each examination, the place, time and date of administration of the examination, and those persons who shall have successfully passed the examination.

(b) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed such an examination.

(3) Internship and other training programs.

(a) All applicants for licensure by examination shall obtain practical experience in the practice of pharmacy concurrent with or after college attendance, or both, under such terms and conditions as the board shall determine.

(b) The board shall establish standards for internship or any other program necessary to qualify an applicant for the licensure examination and shall also determine the necessary qualifications of any preceptors used in any internship or other program.

(4) Any applicant who is a graduate of a school or college of pharmacy located outside the United States, the degree program of which has not been approved by the board, but who is otherwise qualified to apply for a license to practice pharmacy in this state, may be considered to have satisfied the degree requirements of subsection (1)(d) of this section by verification to the board of his academic record and his graduation and by meeting any other requirements as the board may establish from time to time. The board may require the applicant successfully pass an examination given or approved by the board to establish proficiency in english and an equivalency of education with qualified graduates of a degree program specified in subsection (1)(d) of this section as a prerequisite of taking the licensure examination as provided in subsection (1)(f) of this section.

History.

I.C., § 54-1722, as added by 1979, ch. 131,
§ 3, p. 402; am. 1985, ch. 49, § 1, p. 99.

STATUTORY NOTES

Cross References.

Age of majority, § 32-101.

Board of pharmacy, § 54-1706.

54-1723. Qualifications for licensure by reciprocity. — (1) To obtain a license as a pharmacist by reciprocity, an applicant for licensure shall:

(a) Have submitted a written application in the form prescribed by the board of pharmacy.

(b) Have attained the age of majority.

(c) Have good moral character and temperate habits.

(d) Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in this state.

(e) Have engaged in the practice of pharmacy for a period of at least one (1) year or have met the internship requirements of this state within the one (1) year immediately previous to the date of such application.

(f) Have presented to the board proof of initial licensure by examination and proof that such license and any other license or licenses granted to the applicant by any other state or states have not been suspended, revoked, canceled or otherwise restricted for any reason except nonrenewal or the failure to obtain required continuing education credits in any state where the applicant is licensed but not engaged in the practice of pharmacy.

(g) Have paid the fees specified by the board of pharmacy for issuance of a license.

(2) Eligibility. No applicant shall be eligible for licensure by reciprocity unless the state in which the applicant was initially licensed as a pharmacist also grants reciprocal licensure to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

(3) Temporary reciprocity license.

(a) In conjunction with an application for a license as a pharmacist by reciprocity, the applicant may be granted a temporary license as a pharmacist upon compliance with the following terms and conditions:

(i) The applicant has filed a complete application for licensure by reciprocity and paid all fees for such application, which fees shall not be refundable upon grant of a temporary license;

(ii) The applicant has passed the state jurisprudence examination with a score of not less than seventy-five (75);

(iii) The applicant submits photocopies of all current licenses to practice pharmacy in any other states or jurisdictions;

(iv) The applicant provides documentation of any and all actions taken against any of the applicant's licenses to practice pharmacy by any other state or jurisdiction, and any such action does not otherwise render the applicant ineligible for licensure by reciprocity in Idaho;

(v) The applicant submits evidence that the applicant has lawfully practiced pharmacy in the United States or its territories for the preceding twelve (12) months prior to filing of the application;

(vi) The applicant submits evidence that the applicant has completed all continuing education requirements of the applicant's active licenses for the three (3) calendar years preceding the application; and

(vii) The applicant executes a sworn statement that all of the documents, evidence and statements of the applicant submitted to the board in conjunction with the application for licensure by reciprocity and the request for temporary licensure are true and correct, and that the applicant has fully disclosed all information required for licensure by reciprocity and for temporary licensure.

(b) Upon completion of the above requirements to the satisfaction of the executive director, the applicant may be granted a temporary license by reciprocity for a period of not more than sixteen (16) consecutive weeks as follows:

(i) The temporary license shall not be renewable nor may the applicant reapply for temporary licensure for a period of one (1) year after lapse of a temporary license;

- (ii) The temporary license shall lapse automatically upon the grant or denial of a license by reciprocity upon subsections (1) and (2) of this section;
- (iii) The temporary license shall not include acting as a pharmacist-in-charge or as a preceptor or supervising interns or externs;
- (iv) The temporary license shall be subject to discipline in the same manner as a full license, and shall also be subject to immediate suspension by the executive director upon reasonable evidence that the applicant has not fulfilled the requirements for such temporary license or that the documents, evidence and statement of the applicant submitted to the board are not true and correct, or that the applicant's disclosures required by this section are not complete. Suspension of a temporary license by the executive director shall be immediate subject only to reinstatement upon appeal by the applicant to the board at its next scheduled meeting; and
- (v) In the event the temporary license lapses without the contemporaneous grant of full licensure by reciprocity, or the temporary license is suspended by the executive director, then all privileges allowed under the temporary license, including those relating to any controlled substance registration granted under the temporary license, shall also cease.

History.

I.C., § 54-1723, as added by 1979, ch. 131,
§ 3, p. 402; am. 2005, ch. 218, § 1, p. 693.

STATUTORY NOTES**Cross References.**

Age of majority, § 32-101.

54-1723A. Registration to engage in the practice of telepharmacy across state lines. — (1) No pharmacist who is not licensed to practice pharmacy within the state of Idaho may engage in the practice of telepharmacy across state lines unless registered by the board pursuant to this section.

(2) To obtain registration to engage in the practice of telepharmacy across state lines, the applicant shall:

- (a) Present to the board proof of licensure in another state and proof that such license is in good standing;
- (b) Submit a written application in the form prescribed by the board;
- (c) Pay the fee(s) specified by the board for the issuance of the registration; and
- (d) Comply with all other requirements of the board.

(3) The application required under this section shall request from the applicant, at a minimum, the following information:

- (a) Name, address and current pharmacist licensure information in all other states, including each state of licensure and each license number;
- (b) Name, address, telephone number and state of licensure or registration and license or registration number of the facility from which the

applicant will be engaged in the practice of telepharmacy across state lines; and

(c) A statement attesting that the applicant will abide by the pharmacy laws and rules of the state of Idaho.

(4) A successful applicant for registration under this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.

(5) Renewal of a registration to engage in the practice of pharmacy across state lines shall be annual. The application for renewal shall be submitted to the board no later than the thirtieth day of June. The board shall renew the registration of a pharmacist who is qualified to engage in the practice of pharmacy across state lines as provided for in this section. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration.

History.

I.C., § 54-1723A, as added by 2009, ch. 244,
§ 4, p. 748; am. 2010, ch. 116, § 1, p. 242.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 116, substi-

tuted "thirtieth day of June" for "first day of June" in subsection (5).

54-1724. Renewal of licenses. — (1) Each pharmacist shall apply for license renewal annually no later than the thirtieth day of June. The board shall renew the license of each pharmacist who is qualified to engage in the practice of pharmacy.

(2) The board shall specify by rule or regulation the procedures to be followed and the fees to be paid for renewal of licenses.

History.

I.C., § 54-1724, as added by 1979, ch. 131,
§ 3, p. 402; am. 2010, ch. 116, § 2, p. 242.

STATUTORY NOTES

Cross References.

License renewal and reinstatement, § 67-2614.

section (1), substituted "shall apply for license renewal annually no later than the thirtieth day of June" for "shall apply for renewal of his license annually no later than the first day of June."

Amendments.

The 2010 amendment, by ch. 116, in sub-

54-1725. Continuing pharmacy education. — (1) The legislature makes the following findings and declarations:

(a) Because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health-care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain his professional competency and improve his professional skills; and

(b) To assure the continued competency of the pharmacist and to main-

tain uniform qualifications for registration and licensure in the profession for the protection of the health and welfare of its citizens, the legislature of this state deems it in the public interest to adopt a continuing professional education program.

(2) Commencing July 1, 1980, no annual renewal license shall be issued to a pharmacist until such pharmacist shall have submitted proof to the board that he has satisfactorily completed an accredited program of continuing professional education during the previous year to help assure his continued competence to engage in the practice of pharmacy. The board shall from time to time determine the amount of continuing education to be required.

(3) The board shall adopt rules and regulations necessary to carry out the stated objectives and purposes and to enforce the provisions of this section, which shall include the methods of determining accredited programs, any fees and such other rules and regulations consistent with this section as the board shall determine.

(4) The board may grant to a pharmacist who meets all of the necessary requirements for renewal of licensure, except the continuing education requirements, alternate methods of obtaining continuing education through home-study courses, correspondence courses, audiovisual aids, or other such programs, examination or the like, substantially equivalent in scope and content to the continuing professional education programs regularly scheduled; provided, however, only those pharmacists shall be eligible for the alternative programs who, upon written application to the board and for good cause shown, demonstrate that they are unable to attend a sufficient number of regularly scheduled continuing professional education programs for licensure. This section and all rules and regulations promulgated hereunder shall be uniformly applied by the board.

History.

I.C., § 54-1725, as added by 1979, ch. 131,
§ 3, p. 402.

54-1726. Grounds for discipline. — The board of pharmacy may refuse to issue or renew, or may suspend, revoke or restrict the licenses of any person, pursuant to the procedures set forth in chapter 52, title 67, Idaho Code, upon one or more of the following grounds:

- (a) Unprofessional conduct as that term is defined by the rules of the board;
- (b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public;
- (c) Being found guilty, convicted or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one or more of the following:
 1. Any felony;
 2. Any act involving moral turpitude, gross immorality or which is related to the qualifications, functions or duties of a licensee; or
 3. Violations of the pharmacy or drug laws of this state or rules

- pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government;
- (d) Fraud or intentional misrepresentation by a licensee in securing the issuance or renewal of a license.
- (e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license, or falsely using the title of pharmacist.
- (f) Being found by the board to be in violation of any of the provisions of this chapter, chapter 27, title 37, Idaho Code, or rules adopted pursuant to either chapter.

History.

I.C., § 54-1726, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 152, § 3, p. 405; am.

1988, ch. 12, § 1, p. 14; am. 1993, ch. 216, § 70, p. 587.

STATUTORY NOTES

Cross References.

“Felony” defined, §§ 18-111, 18-111A.

JUDICIAL DECISIONS

ANALYSIS

Collateral attack.
Revocation of license.
Sale of misbranded drug.
Sufficiency of evidence.

Collateral Attack.

The pharmacist’s conviction for possession of drug paraphernalia, which was a ground for discipline under subdivisions (1)(c)3 and (1)(f) of this section, was not subject to collateral attack in an administrative agency action, and the judgment of conviction for possession of drug paraphernalia was admissible under § 67-5210 (now 67-5251). *Brown v. Idaho State Bd. of Pharmacy*, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

Revocation of License.

Where the evidence indicated that the pharmacist was engaged in the illegal use of a controlled substance, and in selling and delivering a misbranded drug, the state board of pharmacy’s decision to revoke his license was not arbitrary or capricious. *Brown v. Idaho State Bd. of Pharmacy*, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

Sale of Misbranded Drug.

The sale and delivery of an over-the-counter hay fever medication in an unmarked container violated the prohibition against selling and delivering a misbranded drug, and this violation was grounds for discipline under this section. *Brown v. Idaho State Bd. of Pharmacy*, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

Sufficiency of Evidence.

The state board of pharmacy’s finding that the pharmacist regularly used marijuana was supported by substantial evidence, where the pharmacist admitted to the board’s investigator that he had used marijuana, and when asked to give a more specific answer, he stated that he had used marijuana approximately twice a week. *Brown v. Idaho State Bd. of Pharmacy*, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

54-1727. Confidentiality of prescriptions and patient information. — (1) All prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient shall be held in the strictest confidence. No person in possession of such information shall release the information, unless requested as follows:

(a) By the board, or its representatives, acting in their official capacity;

- (b) By the patient, or the patient's designee, regarding the patient's own records;
- (c) By the practitioner, or the practitioner's designee, who issued the prescription;
- (d) By other licensed health care professionals who are responsible for the direct and acute care of the patient;
- (e) By agents of the department of health and welfare when acting in their official capacity with reference to issues related to the practice of pharmacy (written requests by authorized agents of the department requesting such information are required);
- (f) By agents of any board whose practitioners have prescriptive authority, when the board is enforcing laws governing that practitioner;
- (g) By an agency of government charged with the responsibility for providing medical care for the patient (written requests by authorized agents of the agency requesting such information are required);
- (h) By the federal food and drug administration (FDA), for purposes relating to monitoring of adverse drug events in compliance with the requirements of federal law, rules or regulations adopted by the federal food and drug administration;
- (i) By the patient's authorized insurance benefit provider or health plan providing health care coverage or pharmacy benefits to the patient.
- (j) Nothing in this section shall be construed to prohibit consultations between health care professionals who are involved in the diagnosis, care and treatment of the patient.
- (k) Nothing in this section shall prohibit insurance companies and health plans from sharing patient specific information with law enforcement authorities or any of the entities identified in subsections (1)(a) through (i) of this section, in cases of suspected fraud and substance abuse.
- (l) Nothing in this section shall prohibit disclosure of patient specific information to law enforcement authorities pursuant to a search warrant, subpoena, or other court order.
- (2) Nothing in this section shall prevent the pharmacist or others from providing aggregate or other data, which does not identify the patient to qualified researchers, including pharmaceutical manufacturers, for purposes of clinical, pharmacoepidemiological, or pharmacoeconomic research.
- (3) Any person who has knowledge by virtue of his office or occupation of any prescription drug order, record, or pharmacy related information that specifically identifies an individual patient shall not divulge such information except as authorized in subsections (1) and (2) of this section. Any person or entity to whom information is divulged pursuant to subsection (1) of this section shall not divulge such information except in compliance with this section.
- (4) Nothing in this section shall limit the authority of the board or its representatives from inspecting the records of pharmacies or pharmacists or the authority of any other board with licensees who have prescriptive authority from performing any other duty or authority of that board, nor shall this section limit a court of competent jurisdiction from ordering the release or disclosure of such records upon a showing of just cause after such

review or hearing as the court deems necessary and proper. This section shall not limit the authority of any other board or agency to inspect records of persons it regulates, notwithstanding that the records may contain information protected by the provisions of this section.

(5) In addition to all other penalties as provided by law, any person or entity found by the board to be in violation of the provisions of this section shall be subject to an administrative penalty not to exceed three thousand dollars (\$3,000) for each violation.

(6) No person shall be liable, nor shall a cause of action exist, for any loss or damage based upon the proper good faith release of records pursuant to the provisions of subsection (1) or (2) of this section.

History.

I.C., § 54-1727, as added by 2000, ch. 189,
§ 1, p. 465; am. 2007, ch. 140, § 1, p. 405.

STATUTORY NOTES

Prior Laws.

Former § 54-1727, which comprised I.C., § 54-1727, as added by 1979, ch. 131, § 3, p. 402, was repealed by S.L. 1993, ch. 216, § 71, effective July 1, 1993.

Compiler's Notes.

The words and abbreviation enclosed in parentheses so appeared in the law as enacted.

Amendments.

The 2007 amendment, by ch. 140, added paragraph (1)(l).

54-1728. Penalties and reinstatement. — (1) Upon the finding of the existence of grounds for discipline of any person holding a license, seeking a license, or a renewal license under the provisions of this act, the board of pharmacy may impose one or more of the following penalties:

- (a) Suspension of the offender's license for a term to be determined by the board;
- (b) Revocation of the offender's license;
- (c) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;
- (d) Refusal to renew offender's license;
- (e) Placement of the offender on probation and supervision by the board for a period to be determined by the board;
- (f) Imposition of an administrative fine not to exceed two thousand dollars (\$2,000) plus costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney fees and costs and costs of hearing transcripts.

(2) Any person whose license to practice pharmacy in this state has been suspended, revoked or restricted pursuant to this act, or any drug outlet whose certificate of registration has been suspended, revoked or restricted pursuant to this act, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in

its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(3) Nothing herein shall be construed as barring criminal prosecutions for violations of the act where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(4) All final decisions by the board shall be subject to judicial review pursuant to the procedures of the administrative procedure act.

History.

I.C., § 54-1728, as added by 1979, ch. 131,

§ 3, p. 402; am. 1985, ch. 152, § 4, p. 405; am. 1995, ch. 42, § 1, p. 63.

STATUTORY NOTES**Compiler's Notes.**

The term "this act," in the introductory paragraph in subsection (1) and twice in subsection (2), and the term "this act," in subsection (3), refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-1724 to

54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

The administrative procedures act, referred to in subsection (4) of this section, is compiled as § 67-5201 et seq.

JUDICIAL DECISIONS**Revocation of License.**

Where the evidence indicated that the pharmacist was engaged in the illegal use of a controlled substance, and in selling and delivering a misbranded drug, the state board of

pharmacy's decision to revoke his license was not arbitrary or capricious. *Brown v. Idaho State Bd. of Pharmacy*, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

54-1729. Registration and licensure of facilities. — (1) All drug or device outlets doing business in or into Idaho shall annually register with or be licensed by, as applicable, the board of pharmacy.

(2) Each drug or device outlet shall apply for a certificate of registration or a license in one (1) of the following classifications:

- (a) Retail pharmacy;
- (b) Institutional facility;
- (c) Manufacturer;
- (d) Wholesaler;
- (e) Veterinary drug outlet;
- (f) Telepharmacy across state lines;
- (g) Mail service pharmacy;
- (h) Limited service outlet.

(3) The board shall establish by rule under the powers granted to it under sections 54-1718 and 54-1719, Idaho Code, the criteria which each drug outlet, that has employees or personnel engaged in the practice of pharmacy, must meet to qualify for registration or licensure in each classification designated in subsection (2) of this section. The board may issue various types of certificates with varying restrictions to such limited service outlets in subsection (2) where the board deems it necessary by reason of the type of drug outlet requesting a certificate.

(4) It shall be lawful for a drug outlet registered or licensed under this section to sell and distribute nonprescription drugs. Drug outlets engaging

in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule will be adopted by the board under this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise apply to or interfere with the sale and distribution of such medicines.

(5) Drug outlets registered under subsection (2)(f) of this section shall pay the same registration fee as those registering under subsection (2)(b) of this section, but shall also pay the actual costs of the out-of-state inspection of the drug outlet as may be required by the board, including the transportation, lodging and related expenses of the board's inspector. Nothing in this section shall preclude the board, in lieu of an inspection by the board, from relying on an inspection of the drug outlet conducted by the regulatory authority of the state within which the drug outlet is located.

History.

I.C., § 54-1729, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 21, § 1, p. 33; am.

2009, ch. 244, § 5, p. 748; am. 2011, ch. 135, § 3, p. 375.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 244, rewrote the section to the extent that a detailed comparison is impracticable, adding subsection (5).

The 2011 amendment, by ch. 135, inserted "and licensure" in the section heading; inserted "or device," "doing business in or into

Idaho," and "or be licensed by, as applicable" in subsection (1); rewrote subsection (2); inserted "or licensure" in the first sentence and "limited service" in the last sentence in subsection (3); inserted "or licensed" in the first sentence in subsection (4); and updated the reference in subsection (5) to reflect the amendment of subsection (2).

54-1730. Application procedures. — (1) The board shall specify by rule or regulation the registration procedures to be followed, including but not limited to specification of forms for use in applying for such certificates of registration and times, places and fees for filing such application; provided, however, the annual fee for an original or renewal certificate shall not exceed one hundred dollars (\$100).

(2) Applications for certificates of registration shall include the following information about the proposed drug outlet:

- (a) Ownership;
- (b) Location;
- (c) Identity of pharmacist licensed to practice in the state, who shall be the pharmacist in charge of the drug outlet, where one is required by this act, and such further information as the board may deem necessary.

(3) Certificates of registration issued by the board pursuant to this act shall not be transferable or assignable.

(4) The board shall specify by rule and regulation minimum standards for the professional responsibility in the conduct of any drug outlet that has employees or personnel engaged in the practice of pharmacy. The board is specifically authorized to require that the portion of the facility to which such certificate of registration applies be operated only under the direct supervision of no less than one (1) pharmacist licensed to practice in this

state and not otherwise, and to provide such other special requirements as deemed necessary.

History.

I.C., § 54-1730, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES**Compiler's Notes.**

The words "this act," in paragraph (2)(c) and subsection (3), refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-

1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1731. Notifications. — (1) All registered drug outlets shall report to the board of pharmacy the occurrence of any of the following changes:

- (a) Permanent closing;
- (b) Change of ownership, management, location or pharmacist in charge;
- (c) Any and all other matters and occurrences as the board may require by rules and regulations.

(2) Disasters, accidents and emergencies which may affect the strength, purity or labeling of drugs, medications, devices or other materials used in the diagnosis or the treatment of injury, illness and disease shall be immediately reported to the board.

History.

I.C., § 54-1731, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES**Cross References.**

Board of pharmacy, § 54-1706.

54-1732. Violations and penalties. — (1) No drug outlet designated in section 54-1729, Idaho Code, shall be operated until a certificate of registration has been issued to said facility by the board. Upon the finding of a violation of this subsection, the board may impose one (1) or more of the penalties enumerated in section 54-1728, Idaho Code.

(2) Reinstatement of a certificate that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified in section 54-1728(2), Idaho Code.

(3) The following acts, or the failure to act, and the causing of any such act or failure are unlawful;

(a) The sale, delivery or administration of any prescription drug or legend drug unless:

- (i) Such legend drug is dispensed or delivered by a pharmacist upon an original prescription, drug order or prescription drug order by a practitioner in good faith in the course of his practice. Any person violating the provisions of this subparagraph shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more

than five thousand dollars (\$5,000) or by both such fine and imprisonment.

(ii) There is affixed, in the case of a legend drug dispensed or delivered by a pharmacist, to the immediate container in which such drug is delivered a label bearing the name, address, and phone number of the establishment from which such drug was dispensed; the date on which the prescription for such drug was filled; the number of such prescription as filed in the prescription files of the pharmacist who filled the prescription; the name of the practitioner who prescribed such drug; the name of the patient, and if such drugs were prescribed for an animal, a statement of the species of the animal; and the directions for the use of the drug as contained in the prescription; or in the case of a legend drug delivered or administered by a practitioner in the course of his practice, the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug; the name and address of such practitioner; the name of the patient; and if such drug is prescribed for an animal, a statement of the species of the animal. Any person violating this subparagraph shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500). Nothing in this subparagraph prohibits a practitioner from delivering professional samples of legend drugs in their original containers in the course of his practice when oral directions for use are given at the time of such delivery.

(b) The refilling of any prescription or drug order for a legend drug except as designated on the prescription or drug order, or by the authorization of the practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(c) The possession or use of a legend drug or a precursor by any person unless such person obtains such drug on the prescription or drug order of a practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(d) The failure to keep records as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(e) The refusal to make available and to accord full opportunity to check any record, as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(f) It is unlawful to:

(i) Obtain or attempt to obtain a legend drug or procure or attempt to procure the administration of a legend drug by fraud, deceit, misrepresentation or subterfuge; by the forgery or alteration of a prescription, drug order, or of any written order; by the concealment of a material fact; or by the use of a false name or the giving of a false address.

(ii) Communicate information to a physician in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug. Any such communication shall not be deemed a privileged communication.

(iii) Intentionally make a false statement in any prescription, drug order, order, report or record required by this chapter.

(iv) For the purpose of obtaining a legend drug to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other person.

(v) Make or utter any false or forged prescription or false drug order or forged written order.

(vi) Affix any false or forged label to a package or receptacle containing legend drugs. This subparagraph does not apply to law enforcement agencies or their representatives while engaged in enforcing state and federal drug laws.

(vii) Wholesale or retail any prescription or legend drug to any person in this state not entitled by law to deliver such drug to another.

(4) Provided however, that a veterinarian may dispense or deliver a legend drug prescribed for an animal upon the prescription, drug order, or prescription drug order of another veterinarian. The label shall comply with the provisions of subsection (3)(a)(ii) of this section, and penalties for violations of the provisions of this subsection shall be as provided in this section for like violations by a pharmacist.

(5) The ultimate user of a legend drug who has lawfully obtained such legend drug may deliver, without being registered, the legend drug to another person for the purpose of disposal of the legend drug if the person receiving the legend drug for purposes of disposal is authorized under a state or federal law or regulation to engage in such activity.

Every violation of subsection (3)(f)(i) through (vi) of this section shall be a misdemeanor and any person convicted thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or fined not more than one thousand dollars (\$1,000), or punished by both such fine and imprisonment. Any person violating subsection (3)(f)(vii) of this section is guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars (\$5,000), or by both such fine and imprisonment.

History.

I.C., § 54-1732, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 43, § 1, p. 90; am. 2010, ch. 113, § 1, p. 231.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 113, made internal reference corrections throughout the section and added subsection (5).

54-1733. Validity of prescription drug orders. — (1) Except as provided in subsection (4) of this section, a prescription drug order for a legend drug is not valid unless it is issued for a legitimate medical purpose arising from a prescriber-patient relationship which includes a documented patient evaluation adequate to establish diagnoses and identify underlying conditions and/or contraindications to the treatment. Treatment, including issuing a prescription drug order, based solely on an online questionnaire or consultation outside of an ongoing clinical relationship does not constitute a legitimate medical purpose. A prescription drug order may be issued either:

(a) By a practitioner acting in the usual course of his profession; or
(b) By a physician, dentist, veterinarian, scientific investigator or other person, other than a pharmacist, who is licensed in a jurisdiction other than the state of Idaho and is permitted by such license to dispense, conduct research with respect to or administer the prescribed legend drugs in the course of his professional practice or research in such jurisdiction, so long as the individual is acting within the jurisdiction, scope and authority of his license when issuing the prescription drug order.

(c) The prescription drug order may be signed and sent electronically pursuant to chapter 50, title 28, Idaho Code.

(d) Transmission of prescription drug order. In addition to delivery of the original signed written prescription drug order to a licensed pharmacy:

(i) A prescription drug order that has been signed by the practitioner may be received by a licensed pharmacy for dispensing purposes through a facsimile transmission from the prescribing practitioner or the practitioner's agent, or from an institutional facility for a patient or resident in such facility;

(ii) A prescription drug order may also be received by a licensed pharmacist verbally from the practitioner, the practitioner's agent or from a licensed practical nurse or licensed professional nurse in an institutional facility for a patient or resident in such facility;

(iii) A prescription drug order received verbally from the practitioner by a licensed practical nurse or licensed professional nurse in a licensed institutional facility for a patient or resident in such facility may also be sent by facsimile transmission from the institutional facility to a licensed pharmacy for dispensing purposes provided the transmitted document includes the name of the prescriber issuing the prescription drug order, the name of the nurse who transcribed the order and the name of the person who sent the facsimile.

(e) In the event that there are no refills remaining on an existing prescription drug order, and the pharmacist requests a new prescription drug order from the practitioner, the practitioner's agent, after obtaining practitioner authorization, may sign and return the request via facsimile so long as:

- (i) The request is generated from the pharmacy;
 - (ii) The request is for medication that the patient is currently taking;
 - (iii) There are no changes to the type of drug, its strength or directions for the continuation of therapy;
 - (iv) The practitioner's agent's transmission is received via facsimile from the practitioner's office; and
 - (v) The request, which is subsequently transmitted back to the requesting pharmacy by the practitioner's agent, contains all components of a valid prescription drug order.
- (2) It is unlawful for a practitioner to knowingly issue an invalid prescription drug order for a legend drug.
- (3) It is unlawful for a pharmacist or veterinarian to knowingly fill an invalid prescription drug order for a legend drug.
- (4) A prescriber who is otherwise authorized to perform any of the activities listed in this subsection may prescribe or perform any of the following activities for a patient with whom the prescriber does not have a prescriber-patient relationship under the following circumstances:
- (a) Writing initial admission orders for a newly hospitalized patient;
 - (b) Writing a prescription for a patient of another prescriber for whom the prescriber is taking call;
 - (c) Writing a prescription for a patient examined by a physician assistant, advanced practice registered nurse or other licensed practitioner with whom the prescriber has a supervisory or collaborative relationship;
 - (d) Writing a prescription for medication on a short-term basis for a new patient prior to the patient's first appointment;
 - (e) In emergency situations where life or health of the patient is in imminent danger;
 - (f) In emergencies that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
 - (g) If a prescriber makes a diagnosis of a sexually transmitted disease in a patient, the prescriber may prescribe or dispense antibiotics to the infected patient's named sexual partner or partners for treatment of the sexually transmitted disease as recommended by the most current centers for disease control and prevention (CDC) guidelines.
- (5) Prescribing drugs to individuals without a prescriber-patient relationship and not in accordance with this section shall be unprofessional conduct and the prescriber shall be subject to discipline according to the provisions of the Idaho Code chapter pursuant to which the prescriber is licensed, certified or registered.

History.

I.C., § 54-1733, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 43, § 2, p. 90; am. 2000, ch. 276, § 2, p. 898; am. 2006, ch. 117, § 1, p. 330; am. 2006, ch. 290, § 2, p. 888; am.

2007, ch. 90, § 25, p. 246; am. 2007, ch. 245, § 1, p. 722; am. 2010, ch. 112, § 1, p. 229; am. 2011, ch. 135, § 4, p. 375; am. 2012, ch. 163, § 1, p. 442.

STATUTORY NOTES

Amendments.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 117, divided the provisions of former subsection (1) into the introductory paragraph and subdivisions (a) and (b) following the paragraph and added the language beginning “arising from a prescriber-patient relationship” to the end of the introductory paragraph.

The 2006 amendment, by ch. 290, added provisions designated as (1)(a) and (1)(b) in that act, but those provisions were temporarily redesignated as (1)(c) and (1)(d) in the Idaho Code because of the 2006 amendment by ch. 117. The temporary redesignations were made permanent by S.L. 2007, ch. 90, § 25.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 90, corrected the designations of the fourth and fifth paragraphs of subsection (1).

The 2007 amendment, by ch. 245, deleted

“and license number” preceding “of the nurse” in paragraph (1)(d)(iii).

The 2010 amendment, by ch. 112, throughout the introductory paragraph in subsection (1), in paragraph (1)(b), and in subsections (2) and (3), substituted “prescription drug order” for “prescription or drug order”; in the introductory language in paragraph (1)(d), inserted the last occurrence of “drug order”; and added paragraph (1)(e).

The 2011 amendment, by ch. 135, substituted “institutional facility” for “health care facility” throughout paragraph (1)(d).

The 2012 amendment, by ch. 163, added the exception at the beginning of subsection (1) and added subsections (4) and (5).

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 2000, ch. 277 declared an emergency. Approved April 14, 2000.

Section 6 of S.L. 2006, ch. 290 declared an emergency. Approved March 31, 2006.

54-1734. Exceptions. — The provisions of this chapter pertaining to the sale of prescription drugs are not applicable:

(1) To the sale of legend drugs to persons included in any of the classes named in paragraphs (a) through (f) in subsection (2) of this section, or to the agents or employees of such persons, for use in the usual and lawful course of their business or practice or in the performance of their lawful official duties, as the case may be; or

(2) To the possession of legend drugs by such persons or their agents or employees for such use:

- (a) Pharmacists;
- (b) Practitioners;
- (c) Persons who procure legend drugs for handling by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale;
- (d) Hospitals and other institutions which procure legend drugs for lawful administration by practitioners;
- (e) Manufacturers and wholesalers;
- (f) Carriers and warehousemen.

(3) To the sale by a business not licensed as a pharmacy of legend drugs (excluding controlled substances) designated for veterinary use which require a prescription, provided that:

- (a) The business is registered and licensed with the board of pharmacy.
- (b) The sale is authorized by a written or oral order from a veterinarian licensed in this or another state.

1. Prior to dispensing an order from an out-of-state veterinarian, the

seller must confirm and document that the veterinarian is properly licensed in his state.

2. Oral orders must be confirmed by the veterinarian in writing no later than seven (7) days after the seller receives the order.

(c) The written order or confirmation of an oral order must be retained on the premises of the business for at least two (2) years after the original date of the order.

History.

I.C., § 54-1734, as added by 1979, ch. 131,

§ 3, p. 402; am. 1985, ch. 21, § 2, p. 33; am. 2010, ch. 64, § 1, p. 113.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 64, in paragraph (3)(b)2, substituted “seven (7) days” for “seventy-two (72) hours”.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

54-1735. Maintenance of records. — (1) Manufacturers and wholesalers. Manufacturers and wholesalers shall maintain records of the movement in commerce of legend drugs for two (2) years immediately following the date of the last entry on such record and shall make such records available, at reasonable times, to law enforcement agencies and their representatives in the enforcement of this act. Evidence obtained under this section may not be used in a criminal prosecution of the person from whom obtained.

(2) Pharmacies. In order to effectively counsel patients, the pharmacist shall make a reasonable effort to obtain, record and maintain significant patient information including, but not limited to:

- (a) Name, address, telephone number;
- (b) Date of birth (age), gender;
- (c) Medical history:
 - 1. Disease state(s);
 - 2. Allergies/drug reactions; and
 - 3. Current list of medications and devices;
- (d) Pharmacist comments.

History.

I.C., § 54-1735, as added by 1979, ch. 131, § 3, p. 402; am. 1992, ch. 179, § 3, p. 564.

STATUTORY NOTES

Compiler’s Notes.

The words “this act,” in subsection (1), refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726, 54-1728

to 54-1738, 9-1701, and 9-1702. The reference probably should be to “this chapter”.

The words enclosed in parentheses so appeared in the law as enacted.

54-1736. Declaration of common nuisance. — Any store, shop, warehouse, dwelling house, apartment, building, vehicle, boat, aircraft, or any place whatever, which is used by any person for the purpose of unlawfully using any legend drug, or which is used for the unlawful keeping

or selling of the same, is a common nuisance. No person shall keep, or maintain such a common nuisance, nor frequent or visit such place knowing it to be used for any said purposes.

History.

I.C., § 54-1736, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES**Cross References.**

Nuisances, § 52-101 et seq.

54-1737. Burden of proof. — (a) In any complaint, information, affidavit or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, proviso, or exemption contained in this chapter, the burden of proof is upon the party claiming any such exception, excuse, proviso or exemption.

(b) Anyone wholesaling or retailing prescription or legend drugs shall bear the burden of ascertaining that the receiver of such drugs is entitled by law to administer, dispense or deliver such drugs and proof that one has sold such drugs at wholesale or retail to an unauthorized person shall be prima facie evidence of illegality.

History.

I.C., § 54-1737, as added by 1979, ch. 131,
§ 3, p. 402.

54-1738. Proof that a drug is a prescription drug or legend drug. — The following shall constitute prima facie evidence in any criminal or civil proceeding in this state that a drug is a prescription drug or legend drug:

(1) In the case of a drug for which a new drug application was submitted to the United States food and drug administration, the affidavit of an officer having legal custody of the official records of the United States food and drug administration stating that such record [records] show that the new drug application was approved, setting forth the date of approval, and further stating that the records show that proposed labeling for the drug which includes the legend "Caution: federal law prohibits dispensing without prescription" was approved. The affidavit shall be accompanied by a certificate that such officer has the custody.

(2) In the case of a drug for which the United States food and drug administration does not require an approved new drug application as a condition for marketing the drug, the affidavit of an officer having legal custody of the official records of the United States food and drug administration stating that such records reflect that the drug meets the criteria of federal law to be regarded as a prescription drug and is required to bear the legend [legend] "Caution: federal law prohibits dispensing without prescription." The affidavit shall be accompanied by a certificate that such officer has the custody.

(3) In the case of drug designated a prescription drug by action of the state board of pharmacy, independently of federal law, the affidavit of an

officer having legal custody of the records of the state board of pharmacy stating that such records show that the drug has been denominated a prescription drug, to which shall be attached a copy of the official document evidencing such action. The affidavit shall be accompanied by a certificate that such officer has the custody.

(4) This section does not prevent proof that a drug is a prescription or legend drug by any method authorized [authorized] by any applicable state [statute], rule of procedure or rule of evidence.

History.

I.C., § 54-1738, as added by 1979, ch. 131,
§ 3, p. 402.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions, in subsections

(1), (2), and (4), were added by the compiler to
supply the probable intended terms.

54-1739. Prospective drug review and counseling. — (1) Before dispensing any prescription, a pharmacist shall complete a prospective drug review as defined in section 54-1705, Idaho Code.

(2) Before dispensing a prescription for a new medication, or when otherwise deemed necessary or appropriate, a pharmacist shall counsel the patient or caregiver. In addition to the counseling requirements provided in section 54-1705, Idaho Code, counseling shall include such supplemental written materials as required by law or as are customary in that practice setting. For refills or renewed prescriptions, a pharmacist or a technician shall extend an offer to counsel the patient or caregiver. If such offer is accepted, a pharmacist shall provide such counseling as necessary or appropriate in the professional judgment of the pharmacist. All counseling and offers to counsel shall be face to face with the patient or caregiver when possible, but if not possible, then a reasonable effort shall be made to contact the patient or caregiver. Nothing in this section shall require a pharmacist to provide counseling when a patient or caregiver refuses such counseling or when counseling is otherwise impossible. Patient counseling shall not be required for inpatients of a hospital or institutional facility when licensed health care professionals administer the medication.

(3) This section shall apply to all registered and licensed pharmacies, including mail service pharmacies. In cases of prescriber dispensing, the prescriber shall perform the prospective drug review and counseling consistent with the provisions of this section.

History.

I.C., § 54-1739, as added by 2011, ch. 263,
§ 2, p. 708.

STATUTORY NOTES

Prior Laws.

Former § 54-1739, Severability, which comprised I.C., § 54-1739, as added by 1979, ch. 131, § 3, p. 402, was repealed by S.L. 2011, ch. 263, § 1, effective July 1, 2011.

54-1740. Short title. — This act shall be known as the “Out-of-State Mail Service Pharmacy Licensing Act.”

History.

I.C., § 54-1740, as added by 1989, ch. 178, § 1, p. 438.

STATUTORY NOTES

Compiler’s Notes.

The words “this act” refer to S.L. 1989, ch. 178, which is compiled as §§ 54-1740 to 54-1748.

54-1741. Legislative declaration. — The legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies located outside the state of Idaho.

As a result, the legislature finds and declares that to continue to protect the Idaho consumer-patient, all out-of-state pharmacies that provide service to Idaho residents shall be licensed with the board, shall disclose specific information about their services, and shall provide pharmacy services at a high level of protection and competence. This act shall be liberally construed to carry out these objects and purposes.

History.

I.C., § 54-1741, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 2, p. 1104.

STATUTORY NOTES

Cross References.

Board of pharmacy, § 54-1706. refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The

Compiler’s Notes.

The words “this act,” in the last paragraph, reference probably should be to “this chapter”.

54-1742. Definition — Out-of-state mail service pharmacy. — For purposes of this act “out-of-state mail service pharmacy” means a pharmacy located outside the state that:

- (1) Ships, mails, or delivers by any lawful means a dispensed legend drug to a resident in this state pursuant to a legally issued prescription;
- (2) Provides information to a resident of this state on drugs or devices which may include, but is not limited to, advice relating to therapeutic values, potential hazards, and uses; or
- (3) Counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

History.

I.C., § 54-1742, as added by 1989, ch. 178,
§ 1, p. 438.

STATUTORY NOTES**Compiler's Notes.**

The words "this act," in the introductory paragraph, refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-1724

to 54-1726, 54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1743. License requirements. — Each out-of-state mail service pharmacy shall be licensed by the board of pharmacy. In order to be licensed by the board to do business in the state of Idaho and for annual renewal of the license, every out-of-state mail service pharmacy shall:

(1) Be licensed in good standing by the state in which its dispensing facilities are located and shall comply with all applicable laws, regulations, and standards of such state and the United States;

(2) Submit an application in form and content as determined by the board but including the following minimum information:

(a) Ownership;

(b) Location;

(c) Identity of a pharmacist licensed to practice pharmacy in the state of domicile, who shall be the pharmacist in charge of the out-of-state mail service pharmacy; and

(d) Such further information as the board may deem necessary.

(3) Pay a fee for the initial license in the amount of five hundred dollars (\$500) and annual renewal in an amount not to exceed the amount set forth in section 54-1720, Idaho Code;

(4) Submit evidence satisfactory to the board that its physical facilities, records and operations are in accordance with the laws and regulations of the state in which the facilities are located;

(5) Submit certification satisfactory to the board that it will cooperate with all lawful requests and directions from the regulatory board or licensing authority of its state of domicile relating to the shipment, mailing or delivery of dispensed legend drugs to Idaho residents;

(6) Submit to the board, at the beginning of each calendar quarter, the following information acceptable to the board in form and substance, by the pharmacist-in-charge, concerning each prescription for a scheduled controlled substance shipped, mailed or delivered to an Idaho resident:

(a) Name of patient;

(b) Name of practitioner;

(c) Number of prescription;

(d) Date of prescription;

(e) Name of drug; and

(f) Strength and quantity of dosage.

(7) In lieu of providing the information required in subsection (6) of this section to the board, the out-of-state mail service pharmacy may submit to on-site inspection by the board.

(8) Every out-of-state mail service pharmacy shall submit to the board a current list of all pharmacists employed by said pharmacy dispensing

prescriptions for shipment to Idaho. Such list shall be updated by January 31 of each year and shall include the following information:

- (a) The full legal name of the pharmacist;
- (b) The location of the facility at which the pharmacist is employed and dispensing prescriptions for shipment to Idaho;
- (c) The identity of the state in which the pharmacist is licensed;
- (d) A certification by the out-of-state mail service pharmacy that the pharmacist is in good standing with the licensing authority of the state of licensing and that no disciplinary action is pending.

History.

I.C., § 54-1743, as added by 1989, ch. 178,
§ 1, p. 438; am. 1994, ch. 348, § 3, p. 1104.

STATUTORY NOTES

Cross References.

Board of pharmacy, § 54-1706.

54-1744. Notifications. — Every out-of-state mail service pharmacy shall report to the board the occurrence of any of the events set forth in section 54-1731, Idaho Code, within ten (10) working days of any such occurrence.

History.

I.C., § 54-1744, as added by 1989, ch. 178,
§ 1, p. 438; am. 1994, ch. 348, § 4, p. 1104.

54-1745. Inspections. — If the regulatory board or licensing authority of the state in which an out-of-state mail service pharmacy is domiciled or, if the matter is within the jurisdiction of the drug enforcement administration of the United States, fails or refuses to conduct an inspection of the out-of-state mail service pharmacy, after a reasonable request by the board, that is substantially equivalent to the inspection that the board would conduct in accordance with this chapter, or fails to obtain records or reports required under this chapter, the board, upon notice to the out-of-state board of pharmacy, shall conduct such inspection. The out-of-state mail service pharmacy shall submit to the inspection by making available all pertinent records, reports, documents and other material or information necessary to complete the inspection.

History.

I.C., § 54-1745, as added by 1989, ch. 178,
§ 1, p. 438.

54-1746. Product selection of prescribed drugs. — (1) No out-of-state mail service pharmacy shall substitute a prescription drug unless the substitution is made in compliance with the provisions of this chapter and the rules and regulations of the board relating to product selection.

(2) In addition to the requirements of this section, each out-of-state mail

service pharmacy dispensing a substituted drug product into this state shall notify the patient of substitution either by telephone or in writing.

History.

I.C., § 54-1746, as added by 1989, ch. 178,
§ 1, p. 438.

STATUTORY NOTES**Cross References.**

Board of pharmacy, § 54-1706.

54-1747. Patient communication. — Every out-of-state mail service pharmacy shall, during its regular hours of operation, but not less than six (6) days per week, and for a minimum of forty (40) hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

History.

I.C., § 54-1747, as added by 1989, ch. 178,
§ 1, p. 438.

54-1748. Violations and penalties. — (1) The board may impose on the license of an out-of-state mail service pharmacy, any of the penalties in section 54-1728, Idaho Code, for any violation of the provisions of this chapter.

(2) The board may impose any of the penalties provided in section 54-1728, Idaho Code, for conduct which causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the out-of-state mail service pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within forty-five (45) days of the referral. The board shall obtain and maintain a record of referrals pursuant to this subsection and any action taken thereon.

(3) It is unlawful for any out-of-state mail service pharmacy which is not licensed pursuant to this act to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of an out-of-state mail service pharmacy which has not licensed with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

(4) Any person or out-of-state mail service pharmacy violating the provisions of this act, upon conviction, shall be guilty of a misdemeanor, subject to imprisonment in the county jail for a period not to exceed one (1) year and/or a fine in an amount not to exceed one thousand dollars (\$1,000). Each such violation shall constitute a separate offense.

History.

I.C., § 54-1748, as added by 1989, ch. 178,
§ 1, p. 438; am. 1994, ch. 348, § 5, p. 1104.

STATUTORY NOTES

Compiler's Notes.

The words "this act," in subsections (3) and (4), refer to S.L. 1979, ch. 131, § 3 compiled as §§ 54-1701 to 54-1723, 54-1724 to 54-1726,

54-1728 to 54-1738, 9-1701, and 9-1702. The reference probably should be to "this chapter".

54-1749. Prospective drug review and counseling. [Repealed.]

Repealed by S.L. 2011, ch. 263, § 3, effective July 1, 2011.

History.

I.C., § 54-1749, as added by 1992, ch. 179, § 4, p. 564.

STATUTORY NOTES

Compiler's Notes.

Former § 54-1749 was amended and redesignated as § 54-1750.

54-1750. Severability. [Repealed.]

Repealed by S.L. 2011, ch. 263, § 4, effective July 1, 2011.

History.

I.C., § 54-1749, as added by 1989, ch. 178, § 1, p. 438; am. and redesign. 1992, ch. 179, § 5, p. 564.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-1749 and was amended and redesignated as this section by § 5 of S.L. 1992, ch. 179.

54-1751. Short title. — Sections 54-1751 through 54-1759, Idaho Code, shall be known and may be cited as the "Idaho Wholesale Drug Distribution Act."

History.

I.C., § 54-1751, as added by 2007, ch. 319, § 1, p. 949.

54-1752. Definitions. — As used in sections 54-1751 through 54-1759, Idaho Code:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(2) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the Internal Revenue Code, complies with the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(3) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(4) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with the federal food and drug administration's implementation of the prescription drug marketing act.

(5) "Drop shipment" means the sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third party logistics provider or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

(6) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.

(7) "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices, consistent with the federal food and drug administration definition of "manufacturer" under its regulations and guidance implementing the prescription drug marketing act.

(8) "Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(9) "Normal distribution channel" means a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third party logistics provider, from that manufacturer to that manufacturer's exclusive distributor, or from that manufacturer directly or through its colicensed partner, third party logistics provider or manufacturer's exclusive distributor to a repackager who is an

authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, either directly or by drop shipment, to:

- (a) A pharmacy to a patient;
 - (b) Other designated persons authorized by law to dispense or administer such drug to a patient;
 - (c) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;
 - (d) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or
 - (e) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.
- (10) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug.
- (11) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.
- (12) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing product to the patient.
- (13) "Repackager" means a person who repackages.
- (14) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. Such third party logistics provider must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.
- (15) "Veterinary pharmacy" means a business properly licensed as a pharmacy engaging exclusively in the preparation and dispensing of prescription drugs for veterinary prescribed use.
- (16) "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs including, but not limited to:
- (a) Manufacturers;
 - (b) Repackagers;
 - (c) Own-label distributors;

- (d) Private-label distributors;
- (e) Jobbers;
- (f) Brokers;
- (g) Warehouses, including manufacturers' and distributors' warehouses;
- (h) Manufacturer's exclusive distributors;
- (i) Authorized distributors of record;
- (j) Drug wholesalers or distributors;
- (k) Independent wholesale drug traders;
- (l) Specialty wholesale distributors;
- (m) Third party logistics providers;
- (n) Retail pharmacies that conduct wholesale distribution; and
- (o) Chain pharmacy warehouses that conduct wholesale distribution.

To be considered part of the normal distribution channel, such wholesale distributor, except for a chain pharmacy warehouse not engaged in whole-sale distribution, must also be an authorized distributor of record.

(17) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

- (a) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.
- (b) The sale, purchase, distribution, trade or transfer of a prescription drug or offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical reasons.
- (c) The distribution of prescription drug samples by manufacturers' representatives.
- (d) Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.
- (e) Drug donations, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.
- (f) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use.
- (g) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.
- (h) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.
- (i) The sale, purchase, distribution, trade or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had, until that time, been exclusively in the normal distribution channel.
- (j) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of trans-

porting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.

(k) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer or third party returns processor, including a reverse distributor.

(l) The sale of a prescription drug by a veterinary pharmacy to the prescribing veterinarian in which:

- (i) The prescribing veterinarian takes title but not physical possession of such prescription drug and invoices the owner or person having custody of the animal for whom the prescription drug is intended; and
- (ii) Pursuant to a valid prescription drug order the veterinary pharmacy labels and delivers the prescription drug directly to the owner or person having custody of the animal for whom the prescription drug is intended.

History.

I.C., § 54-1752, as added by 2007, ch. 319, § 1, p. 949; am. 2009, ch. 105, § 1, p. 320; am.

2009, ch. 143, § 7, p. 428; am. 2011, ch. 144, § 1, p. 405.

STATUTORY NOTES

Amendments.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 105, in the introductory paragraph in subsection (9), inserted the language beginning "or from that manufacturer directly or through its colicensed partner" and ending "United States food and drug administration."

The 2009 amendment, by ch. 143, added subsection (16)(e) and made related redesignations.

The 2011 amendment, by ch. 144, added subsection (15) and redesignated the subsequent subsections accordingly; and added paragraph (17)(l).

Federal References.

Section 1504 of the Internal Revenue Code, referred to in the introductory paragraph of subsection (2), is codified as 26 U.S.C.S. § 1504.

The prescription drug marketing act, referred to in subsections (4) and (7), is Public

Law 100-293, codified as 21 USCS §§ 331, 333, 351, 353, and 381.

For the regulations implementing the prescription drug marketing act, referred to in subsection (7), see 21 C.F.R. § 203.1. et seq.

Section 503(b) of the federal food, drug and cosmetic act, referred to in subsection (11), is codified as 21 U.S.C.S. § 353(c).

Compiler's Notes.

Section 8 of S.L. 2009, ch. 143 provided: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 3 of S.L. 2009, ch. 105 declared an emergency. Approved April 3, 2009.

Section 2 of S.L. 2011, ch. 144 declared an emergency. Approved March 29, 2011.

54-1753. Wholesale drug distributor licensing requirement — Minimum requirements for licensure. — (1) Every wholesale distributor who engages in the wholesale distribution of prescription drugs must be licensed by the board, and every nonresident wholesale distributor must be licensed by the board if it ships prescription drugs into this state in accordance with this act before engaging in wholesale distributions of wholesale prescription drugs. The board shall exempt manufacturers distributing their own federal food and drug administration approved drugs

and devices from any licensing and other requirements to the extent not required by federal law or regulation, unless particular requirements are deemed necessary and appropriate following rulemaking.

(2) The board shall require the following minimum information from each wholesale distributor applying for a license under subsection (1) of this section:

- (a) The name, full business address and telephone number of the licensee;
- (b) All trade or business names used by the licensee;
- (c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;
- (d) The type of ownership or operation, i.e., partnership, corporation, or sole proprietorship;
- (e) The name of each person who is an owner or an operator of the licensee;
- (f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs;
- (g) The name of the applicant's designated representative for the facility, together with the personal information statement and fingerprints, required pursuant to paragraph (h) of this subsection (2) for such individual;
- (h) Each individual required by paragraph (g) of this subsection (2) to provide a personal information statement and fingerprints shall provide the following information to the board:
 - (i) The individual's places of residence for the past seven (7) years;
 - (ii) The individual's date and place of birth;
 - (iii) The individual's occupations, positions of employment and offices held during the past seven (7) years;
 - (iv) The principal business and address of any business, corporation or other organization in which each such office of the individual was held or in which each such occupation or position of employment was carried on;
 - (v) Whether the individual has been, during the past seven (7) years, the subject of any proceeding for the revocation of any license or any criminal violation and, if so, the nature of the proceeding and the disposition of the proceeding;
 - (vi) Whether, during the past seven (7) years, the individual has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control or distribution of prescription drugs or criminal violations, together with details concerning any such event;
 - (vii) A description of any involvement by the individual with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past seven (7) years, which manufactured, administered, prescribed, distributed or stored pharmaceutical products, and any lawsuits in which such businesses were named as a party and in which the individual was also

a named party in the same lawsuit or, regardless of whether the individual was a named party, in which the individual testified as a witness at trial or in a deposition;

(viii) A description of any felony criminal offense of which the individual, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the individual pled guilty or nolo contendere. If the individual indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within fifteen (15) days after the disposition of the appeal, submit to the board a copy of the final written order of disposition; and

(ix) A photograph of the individual taken in the previous year.

(3) The information required pursuant to subsection (2) of this section shall be provided under oath.

(4) The board shall not issue a wholesale distributor license to an applicant, unless the board:

(a) Conducts a physical inspection of the facility at the address provided by the applicant as required in subsection (2)(a) of this section; and

(b) Determines that the designated representative meets the following qualifications:

(i) Is at least twenty-one (21) years of age;

(ii) Has been employed full time for at least three (3) years in a pharmacy or with a wholesale distributor in a capacity related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs;

(iii) Is employed by the applicant full time in a managerial level position;

(iv) Is actively involved in and aware of the actual daily operation of the wholesale distributor;

(v) Is physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized including, but not limited to, sick leave and vacation leave;

(vi) Is serving in the capacity of a designated representative for only one (1) applicant at a time, except where more than one (1) licensed wholesale distributor is colocated in the same facility and such wholesale distributors are members of an affiliated group, as defined in section 1504 of the Internal Revenue Code;

(vii) Does not have any convictions under any federal, state or local law relating to wholesale or retail prescription drug distribution or distribution of controlled substances; and

(viii) Does not have any felony convictions under federal, state or local law.

(5) The board shall submit the fingerprints provided by a person with a license application for a statewide criminal records check and for forwarding to the federal bureau of investigation for a national criminal records check of the individual.

(6) If a wholesale distributor distributes prescription drugs from more

than one (1) facility, the wholesale distributor shall obtain a license for each facility.

(7) In accordance with each licensure renewal, the board shall send to each wholesale distributor licensed under this section a form setting forth the information that the wholesale distributor provided pursuant to subsection (2) of this section. Within thirty (30) days of receiving such form, the wholesale distributor must identify and state under oath to the board all changes or corrections to the information that was provided pursuant to subsection (2) of this section. Changes in, or corrections to, any information in subsection (2) of this section shall be submitted to the board as required by the board. The board may suspend or revoke the license of a wholesale distributor if such authority determines that the wholesale distributor no longer qualifies for the license issued under this section.

(8) The designated representative identified pursuant to subsection (2)(g) of this section must receive and complete continuing training in applicable federal law and the law of this state governing wholesale distribution of prescription drugs.

(9) The board may adopt rules to approve an accreditation body to evaluate a wholesaler's operations to determine compliance with professional standards and any other applicable laws, and to perform inspections of each facility and location where wholesale distribution operations are conducted by the wholesaler.

(10) Information provided under this section shall not be disclosed to any person other than a state licensing authority, government board or government agency, provided such licensing authority, government board or agency needs such information for licensing or monitoring purposes.

History.

I.C., § 54-1753, as added by 2007, ch. 319, § 1, p. 949; am. 2008, ch. 190, § 1, p. 595.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 190, in paragraph (2)(h)(vii), added the language beginning "and in which the individual was also a named party"; and deleted subsections (6) and (7), which dealt with bond requirements and a requirement to establish a fund, and redesignated the subsequent subsections accordingly.

Federal References.

Section 1504 of the Internal Revenue Code,

referred to in paragraph (4)(b)(vi), is codified as 26 U.S.C.S. § 1504.

Compiler's Notes.

The term "this act," in subsection (1), refers to S.L. 2007, ch. 319, the Idaho wholesale drug distribution act, codified as §§ 54-1751 to 54-1759.

Effective Dates.

Section 2 of S.L. 2008, ch. 190 declared an emergency. Approved March 18, 2008.

54-1754. Restrictions on transactions. — (1) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of expired, damaged, recalled or otherwise nonsaleable pharmaceutical product shall be distributed by the receiving

wholesale distributor only to either the original manufacturer or third party returns processor, including a reverse distributor. The returns or exchanges of prescription drugs, saleable or otherwise, including any redistribution by a receiving wholesaler, shall not be subject to the pedigree requirement of section 54-1755, Idaho Code, so long as they are exempt from pedigree under the federal food and drug administration's currently applicable prescription drug marketing act guidance. Wholesale distributors and pharmacies shall be held accountable for administering their returns process and ensuring that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.

(2) A manufacturer or wholesale distributor shall furnish prescription drugs only to a person licensed by the board or other appropriate state licensing authorities. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor shall affirmatively verify that the person is legally authorized to receive the prescription drugs by contacting the appropriate state licensing authorities.

(3) Prescription drugs furnished by a manufacturer or wholesale distributor shall be delivered only to the premises listed on the license; provided that the manufacturer or wholesale distributor may furnish prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(a) The identity and authorization of the recipient is properly established; and

(b) This method of receipt is employed only to meet the immediate needs of a particular patient of the authorized person.

(4) Prescription drugs may be furnished to a hospital pharmacy receiving area provided that a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug so received. Any discrepancy between receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor by the next business day after the delivery to the pharmacy receiving area.

(5) A manufacturer or wholesale distributor shall not accept payment for, or allow the use of, a person's credit to establish an account for the purchase of prescription drugs from any person other than the owner(s) of record, the chief executive officer or the chief financial officer listed on the license of a person legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs must bear the name of the licensee.

History.

I.C., § 54-1754, as added by 2007, ch. 319,
§ 1, p. 949.

54-1755. Pedigree. — (1) In General. Each person who is engaged in wholesale distribution of prescription drugs, including repackagers, but excluding the original manufacturer of the finished form of the prescription drug, that leaves, or has ever left, the normal distribution channel shall,

before each wholesale distribution of such drug, provide a pedigree to the person who receives such drug.

(a) A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of this section only if the pharmacy or chain pharmacy warehouse engages in wholesale distribution of prescription drugs.

(b) The board shall determine by July 1, 2009, a targeted implementation date for electronic track and trace pedigree technology. Such a determination shall be based on consultation with manufacturers, distributors and pharmacies responsible for the sale and distribution of prescription drug products in this state. After consultation with interested stakeholders and prior to implementation of the electronic pedigree, the board shall deem that the technology is universally available across the entire prescription pharmaceutical supply chain. The implementation date for the mandated electronic track and trace pedigree technology will be no sooner than July 1, 2010, and may be extended by the board in one (1) year increments if it appears the technology is not universally available across the entire prescription pharmaceutical supply chain.

(2) Authentication. Each person who is engaged in the wholesale distribution of a prescription drug, including repackagers, but excluding the original manufacturer of the finished form of the prescription drug, who is provided a pedigree for a prescription drug and attempts to further distribute that prescription drug, shall affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(3) Contents. The pedigree shall:

(a) Include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, or the manufacturer's third party logistics provider, colicensed product partner, manufacturer's exclusive distributor, or a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At minimum, the necessary pedigree information shall include:

(i) Name, address, telephone number and, if available, the e-mail address, of each owner of the prescription drug, and each wholesale distributor of the prescription drug;

(ii) Name and address of each location from which the product was shipped, if different from the owner's;

(iii) Transaction dates; and

(iv) Certification that each recipient has authenticated the pedigree.

(b) At minimum, the pedigree shall also include the:

(i) Name of the prescription drug;

(ii) Dosage form and strength of the prescription drug;

(iii) Size of the container;

- (iv) Number of containers;
 - (v) Lot number and national drug code number of the prescription drug; and
 - (vi) Name of the manufacturer of the finished dosage form.
- (4) Maintenance Provisions. Each pedigree or electronic file shall be:
- (a) Notwithstanding the provisions in section 54-1735, Idaho Code, maintained by the purchaser and the wholesale distributor for not less than three (3) years from the date of sale or transfer; and
 - (b) Available for inspection or use within five (5) business days upon a request of an authorized officer of the law.
- (5) Implementation. The board shall adopt rules and a form relating to the requirements of this section no later than ninety (90) days after the effective date of this act.

History.

I.C., § 54-1755, as added by 2007, ch. 319,
§ 1, p. 949; am. 2009, ch. 105, § 2, p. 320.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 105, in subsection (3)(a), inserted the language beginning “or a repackager” and ending “United States food and drug administration.”

the end of subsection (5) refers to the effective date of S.L. 2007, ch. 319, which was July 1, 2007.

Effective Dates.

Section 3 of S.L. 2009, ch. 105 declared an emergency. Approved April 3, 2009.

Compiler's Notes.

The phrase “the effective date of this act” at

54-1756. Enforcement — Order to cease distribution of a drug. —

- (1) If the board finds that there is a reasonable probability that:
- (a) A wholesale distributor, other than a manufacturer, has:
 - (i) Violated a provision in this act; or
 - (ii) Falsified a pedigree, or sold, distributed, transferred, manufactured, repackaged, handled or held a counterfeit prescription drug intended for human use; and
 - (b) The prescription drug at issue as a result of a violation in paragraph (a) of this subsection could cause serious, adverse health consequences or death; and
 - (c) Other procedures would result in unreasonable delay;
- the board shall issue an order requiring the appropriate person, including the distributors or retailers of the drug, to immediately cease distribution of the drug within the state.
- (2) An order under subsection (1) of this section shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than ten (10) days after the date of the issuance of the order, on the actions required by the order. If, after providing an opportunity for such a hearing, the board determines that inadequate grounds exist to support the actions required by the order, the board shall vacate the order.

History.

I.C., § 54-1756, as added by 2007, ch. 319,
§ 1, p. 949.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" in paragraph (1)(a)(i) refers to S.L. 2007, ch. 319, the Idaho whole-

sale drug distribution act, codified as §§ 54-1751 to 54-1759.

54-1757. Discipline — Grounds — Penalties. — (1) Upon a finding that a wholesale distributor is in violation of any provision of this chapter or of this act, or such rules or standards of conduct and practice as may be adopted by the board, and in accordance with the provisions of chapter 52, title 67, Idaho Code, the board may impose any one (1) or more of the penalties provided for in section 54-1728, Idaho Code.

(2) Imposition of a penalty by the board or other action against a wholesale distributor by the board as set forth in this act shall not be construed as barring other civil, administrative or criminal proceedings or prosecutions or entry of any available penalty or sanction as authorized by law.

History.

I.C., § 54-1757, as added by 2007, ch. 319,
§ 1, p. 949.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" in subsections (1) and (2) refers to S.L. 2007, ch. 319, the Idaho

wholesale drug distribution act, codified as §§ 54-1751 to 54-1759.

54-1758. Prohibited acts. — (1) It shall be unlawful for a person to knowingly perform, or cause the performance of, or aid and abet any of the following acts in this state:

- (a) Failure to obtain a license when a license is required by this act;
- (b) Operate as a wholesale distributor without a valid license when a license is required by this act;
- (c) Purchase from or otherwise receive, return or exchange a prescription drug from a pharmacy or chain pharmacy warehouse, other than in compliance with section 54-1754(1), Idaho Code;
- (d) When a state license is required pursuant to section 54-1754(2), Idaho Code, sell, distribute, transfer or otherwise furnish a prescription drug to a person who is not authorized under the law of the jurisdiction in which the person received the prescription drug to receive the prescription drug;
- (e) Failure to deliver prescription drugs to specified premises, as required by section 54-1754(3), Idaho Code;
- (f) Acceptance of payment or credit for the purchase of prescription drugs, other than in compliance with section 54-1754(5), Idaho Code;
- (g) Failure to maintain or provide pedigrees as required by this act;
- (h) Failure to obtain, pass or authenticate a pedigree, as required by this act;

- (i) Provide the board or any of its representatives or any federal official with false or fraudulent records or make false or fraudulent statements regarding any matter within the provisions of this act;
 - (j) Obtain, or attempt to obtain, a prescription drug by fraud, deceit or misrepresentation or engage in misrepresentation or fraud in the distribution of a prescription drug;
 - (k) Manufacture, repackage, sell, transfer, deliver, hold or offer for sale any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit or otherwise has been rendered unfit for distribution;
 - (l) Adulterate, misbrand or counterfeit any prescription drug;
 - (m) Receive any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit;
 - (n) Deliver or proffer delivery of, for pay or otherwise, any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit;
 - (o) Alter, mutilate, destroy, obliterate or remove the whole or any part of the labeling of a prescription drug or commit any other act with respect to a prescription drug that results in the prescription drug being misbranded; or
 - (p) Sell, deliver, transfer or offer to sell to a person not authorized under law to receive the return or exchange of a prescription drug, a prescription drug that has expired, been damaged or recalled by either the original manufacturer, a third party returns processor or a reverse distributor.
- (2) The acts prohibited in subsection (1) of this section do not include a prescription drug manufacturer, or agent of a prescription drug manufacturer, who obtains or attempts to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

History.

I.C., § 54-1758, as added by 2007, ch. 319,
§ 1, p. 949.

STATUTORY NOTES**Cross References.**

Board of pharmacy, § 54-1706.

Compiler's Notes.

The term "this act" used throughout subsec-

tion (1) refers to S.L. 2007, ch. 319, the Idaho wholesale drug distribution act, codified as §§ 54-1751 to 54-1759.

54-1759. Penalties. — (1) Any person who commits any act prohibited by section 54-1758(1)(a) through (1)(h), Idaho Code, is guilty of a misdemeanor, which is punishable by not more than one (1) year of imprisonment, or by a fine not exceeding five thousand dollars (\$5,000), or both.

(2) Any person who commits any act prohibited by section 54-1758(1)(i) through (1)(p), Idaho Code, is guilty of a felony, which is punishable by imprisonment for a term of not less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred thousand dollars (\$500,000), or both.

(3) Any person who, with the intent to commit any of the acts prohibited by section 54-1758(1)(i) through (1)(p), Idaho Code, commits any act prohibited by section 54-1758(1)(a) through (1)(h), Idaho Code, is guilty of a felony, which is punishable by imprisonment for a term of not less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred thousand dollars (\$500,000), or both.

(4) Any criminal penalty imposed on a person who commits any act prohibited by section 54-1758, Idaho Code, is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

History.

I.C., § 54-1759, as added by 2007, ch. 319,
§ 1, p. 949.

STATUTORY NOTES**Compiler's Notes.**

Section 2 of S.L. 2007, ch. 319 provided "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such

provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

54-1760. Short title. — Sections 54-1760 through 54-1765, Idaho Code, shall be known and may be cited as the "Idaho Legend Drug Donation Act."

History.

I.C., § 54-1760, as added by 2009, ch. 143,
§ 1, p. 428.

54-1761. Definitions. — As used in sections 54-1760 through 54-1765, Idaho Code:

(1) "Legend drug" has the same meaning as provided in section 54-1705(31), Idaho Code.

(2) "Medically indigent" means any person who is in need of a legend drug and who is not eligible for medicaid or medicare, who cannot afford private prescription drug insurance or who does not have income and other resources available sufficient to pay for the legend drug.

(3) "Qualifying charitable clinic or center" means a community health center as defined in section 39-3203, Idaho Code, and means a free medical clinic as defined in section 39-7702, Idaho Code, acting in consultation with a pharmacist licensed in the state of Idaho.

History.

I.C., § 54-1761, as added by 2009, ch. 143,
§ 2, p. 428; am. 2010, ch. 79, § 19, p. 133; am.

2010, ch. 348, § 1, p. 909; am. 2011, ch. 135,
§ 5, p. 375.

STATUTORY NOTES**Amendments.**

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 348, effective April 12, 2010, deleted former subsection (1),

which was the definition for "donating entity," and redesignated the subsequent subsections accordingly; updated the section reference in present subsection (1); and in subsection (3), added "acting in consultation with a pharmacist licensed in the state of Idaho."

The 2010 amendment, by ch. 79, effective July 1, 2010, updated the section reference at the end of the paragraph defining "legend drug".

The 2011 amendment, by ch. 135, updated the section reference in subsection (1) in light of the 2011 amendment to § 54-1705.

Effective Dates.

Section 4 of S.L. 2010, ch. 348 declared an emergency. Approved April 12, 2010.

54-1762. Idaho legend drug donation act. — (1) The board of pharmacy shall establish and implement a program through which legend drugs may be transferred from a nursing home that elects to participate in the program for the purpose of distribution to a qualifying charitable clinic or center for donation to qualifying medically indigent patients.

(2) A qualifying charitable clinic or center shall establish procedures consistent with the Idaho legend drug donation act and rules promulgated thereunder.

(3) The acceptance and distribution of legend drugs for use in the program shall be subject to the following requirements:

(a) Donated drugs shall be in the manufacturer's original, sealed and tamper evident packaging, including drugs packaged in single unit doses when the outside packaging is open and the single unit dose packaging is intact. Drugs that have been previously dispensed by a pharmacy in unit dose packaging may be donated provided that the packaging is sealed, tamper evident and properly labeled.

(b) Only drugs that bear a clear and verifiable lot number and expiration date may be accepted and dispensed. However, drugs that bear an expiration date that is less than three (3) months from the date the drug is donated shall not be accepted and dispensed.

(c) Drugs and other substances provided in schedules II through V of article II, chapter 27, title 37, Idaho Code, shall not be accepted and shall not be dispensed.*

(d) A drug shall not be accepted or dispensed if the person accepting or dispensing the drug has reason to believe that the drug has been adulterated.

(4) The following entities that are licensed or registered in the state of Idaho may donate legend drugs to a qualifying charitable clinic or center:

- (a) Pharmacies;
- (b) Hospitals and nursing homes;
- (c) Drug manufacturers; and
- (d) Wholesale distributors.

(5) The following entities may accept legend drugs:

- (a) A qualifying charitable clinic's or center's pharmacy; or
- (b) A qualifying charitable clinic or center in consultation with a pharmacist licensed in the state of Idaho.

(6) Any qualifying charitable clinic or center that participates in the program may dispense drugs donated under the Idaho legend drug donation act to persons who are medically indigent residents of the state of Idaho.

(7) Any qualifying charitable clinic or center dispensing legend drugs shall:

- (a) Comply with the provisions of the Idaho legend drug donation act and all rules promulgated thereunder;

- (b) Comply with all applicable federal and state laws related to the storage and distribution of drugs;
 - (c) Inspect all drugs prior to dispensing to determine that such drugs have not been adulterated; and
 - (d) Dispense drugs only pursuant to a valid prescription.
- (8) Participation in the program is voluntary and nothing in the Idaho legend drug donation act shall require any person or entity to participate in the program.
- (9) Nothing in the Idaho legend drug donation act shall prohibit or restrict the return of unused prescription drugs to the Idaho medicaid program pursuant to rules promulgated by the Idaho department of health and welfare.

History.

I.C., § 54-1762, as added by 2009, ch. 143,
§ 3, p. 428; am. 2010, ch. 348, § 2, p. 909.

STATUTORY NOTES**Cross References.**

Board of pharmacy, § 54-1706.
Idaho legend drug donation act, §§ 54-1760
to 54-1765.

Amendments.

The 2010 amendment, by ch. 348, in subsection (1), substituted "nursing home" for "donating entity," inserted "qualifying," and deleted "pharmacy or to a qualifying charitable center or clinic acting in consultation with a pharmacist" following "center"; in subsection (2), substituted "charitable clinic or center" for "charitable center or clinic in consultation with a pharmacist"; in paragraph (3)(a), rewrote the first sentence, which for-

merly read: "Only drugs in the original, sealed and tamper evident packaging shall be accepted and dispensed, except that drugs packaged in single unit doses may be accepted and distributed when the outside packaging is open and the single unit dose packaging is intact," and added the last sentence; in the introductory paragraph in subsection (4), added "to a qualifying charitable clinic or center"; and in paragraph (5)(b), substituted "charitable clinic or center" for "charitable center or clinic."

Effective Dates.

Section 4 of S.L. 2010, ch. 348 declared an emergency. Approved April 12, 2010.

54-1763. Board duties and powers. — (1) The board of pharmacy shall adopt rules necessary for the donation of legend drugs to qualifying charitable clinics or centers by nursing homes, including:

- (a) Standards and procedures for the transfer, acceptance and safe storage of donated drugs;
 - (b) Standards and procedures for inspecting donated drugs to ensure that the drugs are in compliance with the provisions of the Idaho legend drug donation act and all federal and state product integrity standards and regulations;
 - (c) Standards and procedures for the distribution of donated drugs to a qualifying charitable clinic or center;
 - (d) Standards and procedures for the dispensing of donated drugs to qualifying medically indigent patients; and
 - (e) Any other standards and procedures the board deems appropriate or necessary to implement or enforce the provisions of the Idaho legend drug donation act.
- (2) The board shall provide technical assistance to participants in the program.

History.

I.C., § 54-1763, as added by 2009, ch. 143,
§ 4, p. 428; am. 2010, ch. 348, § 3, p. 909.

STATUTORY NOTES

Cross References.

Board of pharmacy, § 54-1706.
Idaho legend drug donation act, §§ 54-1760
to 54-1765.

Amendments.

The 2010 amendment, by ch. 348, in the
introductory paragraph in subsection (1), sub-
stituted “necessary for the donation of legend
drugs to qualifying charitable clinics or cen-

ters by nursing homes” for “necessary for the
implementation and enforcement of the pro-
gram established under the Idaho legend
drug donation act and for the enforcement of
board rules promulgated thereunder”.

Effective Dates.

Section 4 of S.L. 2010, ch. 348 declared an
emergency. Approved April 12, 2010.

54-1764. Immunity from liability. — Any entity that lawfully and
voluntarily participates by donating, accepting, distributing or dispensing
legend drugs under the Idaho legend drug donation act shall be immune
from liability for any civil action arising out of the provision of such action.
This section shall not extend immunity to the participating entity for any
acts constituting intentional, willful or grossly negligent conduct or to acts
by a participating entity that are outside the scope of practice authorized by
the entity’s licensure, certification or registration.

History.

I.C., § 54-1764, as added by 2009, ch. 143,
§ 5, p. 428.

STATUTORY NOTES

Cross References.

Idaho legend drug donation act, §§ 54-1760
to 54-1765.

54-1765. Exempt from the Idaho wholesale drug distribution act.
— Any person or entity lawfully donating, accepting, distributing or
dispensing legend drugs under the Idaho legend drug donation act shall be
exempt from the provisions of the Idaho wholesale drug distribution act as
provided in sections 54-1751 through 54-1759, Idaho Code.

History.

I.C., § 54-1765, as added by 2009, ch. 143,
§ 6, p. 428.

STATUTORY NOTES

Cross References.

Idaho legend drug donation act, §§ 54-1760
to 54-1765.

54-1766 — 54-1769. [Reserved.]

**54-1770. Notification of drug product selection for epilepsy and
seizure drugs.** — (1) In this section:

(a) “Anti-epileptic drug” means:

- (i) A drug used for the treatment of epilepsy; or
- (ii) A drug used to treat or prevent seizures.

(b) “Drug product selection” means the selection of a therapeutically equivalent drug, including a generic version for the prescribed brand, a branded version for the prescribed generic, a generic version by one (1) manufacturer for a generic version by a different manufacturer.

(c) “Epilepsy” means a neurological condition characterized by recurrent seizures.

(d) “Seizure” means an acute clinical change secondary to a brief disturbance in the electrical activity of the brain.

(2) When a prescriber has specified that a drug is prescribed for the treatment of epilepsy or seizures, pharmacy personnel who perform drug product selections shall:

- (a) Notify the prescriber of such drug product selection via facsimile, telephone message or any other appropriate means to the prescriber’s place of business; and
- (b) Provide the patient or the patient’s representative with notification of the selection.

(3) Nothing in this section shall delay the dispensing of a valid prescription for an anti-epileptic drug.

History.

I.C., § 54-1770, as added by 2010, ch. 277,
§ 1, p. 717.

54-1771. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

History.

I.C., § 54-1771, as added by 2011, ch. 263,
§ 5, p. 708.

CHAPTER 18

PHYSICIANS AND SURGEONS

MEDICAL PRACTICE ACT

SECTION.

- 54-1801. Short title.
- 54-1802. Purpose.
- 54-1803. Definitions.
- 54-1804. Unlicensed practice — Penalties and remedies relating to unlicensed practice.
- 54-1805. The state board of medicine established.
- 54-1806. Powers and duties.
- 54-1806A. Medical disciplinary enforcement.

SECTION.

- 54-1807. State board of medicine — Registration.
- 54-1807A. Physician assistants — Supervising physicians — Physician assistant advisory committee.
- 54-1808. Board to issue licenses.
- 54-1809. State board of medicine fund — Creation of.
- 54-1810. Licensure by written examination.
- 54-1811. Licensure by endorsement.
- 54-1812. Graduates of medical schools located outside of the United States and Canada.

SECTION.

- 54-1813. Temporary license and registration.
- 54-1814. Grounds for medical discipline.
- 54-1815. Violation of act — Injunction.
- 54-1816. [Repealed.]
- 54-1817. Post mortem examinations.
- 54-1818. Reporting of violations by physicians.
- 54-1819. Definition and procedure for determination of death.
- 54-1820. Access to records.
- 54-1821. No physician-patient relationship for informal consultations.
- 54-1822 — 54-1830. [Reserved.]

DISABLED PHYSICIAN ACT

- 54-1831. Short title.

SECTION.

- 54-1832. Grounds for restriction, suspension, or revocation of license.
- 54-1833. Duties of board of medicine.
- 54-1834. Examination by committee.
- 54-1835. Voluntary restriction of licensure.
- 54-1836. Report to the board — Action.
- 54-1837. Proceedings.
- 54-1838. Reinstatement of license.
- 54-1839. Judicial review.
- 54-1840. Protected action and communication.
- 54-1841. Volunteer's license — Qualifications.

MEDICAL PRACTICE ACT

54-1801. Short title. — This chapter may be cited as the “Medical Practice Act.”

History.

I.C., § 54-1801, as added by 1977, ch. 199, § 2, p. 536.

STATUTORY NOTES

Cross References.

Adult abuse, neglect and exploitation act, § 39-5301 et seq.
Artificial insemination, § 39-5401 et seq.
Incorporation of professional service corporations, § 30-1301 et seq.
Medical consent and natural death act, § 39-4501 et seq.

Prior Laws.

Former § 54-1801, which comprised 1949, ch. 23, § 1, p. 27; am. 1969, ch. 84, § 1, p. 237, was repealed by S.L. 1977, ch. 199, § 1.

JUDICIAL DECISIONS

Cited in: State ex rel. State Bd. of Medicine v. Smith, 81 Idaho 103, 337 P.2d 938 (1959); Maxfield v. State, 108 Idaho 493, 700 P.2d 115 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 1 et seq. **C.J.S.** — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

54-1802. Purpose. — Recognizing that the practice of medicine is a privilege granted by the state of Idaho and is not a natural right of individuals, the purpose of this chapter is to assure the public health, safety and welfare in the state by the licensure and regulation of physicians, and the exclusion of unlicensed persons from the practice of medicine.

History.

I.C., § 54-1802, as added by 1977, ch. 199, § 3, p. 536.

STATUTORY NOTES

Prior Laws.

Former § 54-1802, which comprised 1949, ch. 23, § 2, p. 27; am. 1969, ch. 84, § 2, p. 237;

am. 1974, ch. 13, § 142, p. 138, was repealed by S.L. 1977, ch. 199, § 1.

JUDICIAL DECISIONS

Cited in: *Maxfield v. State*, 108 Idaho 493, 700 P.2d 115 (Ct. App. 1985); *Miller v. Haller*, 129 Idaho 345, 924 P.2d 607 (1996).

54-1803. Definitions. — (1) The “practice of medicine” means:

- (a) To investigate, diagnose, treat, correct or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality;
- (b) To apply principles or techniques of medical science in the prevention of any of the conditions listed in paragraph (a) of this subsection; or
- (c) To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in paragraphs (a) and (b) of this subsection.

(2) The word “board” means the state board of medicine.

(3) The term “physician” means any person who holds a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine, provided further, that others authorized by law to practice any of the healing arts shall not be considered physicians for the purposes of this chapter.

(4) “Alternate supervising physician” means a physician who is registered with the board as set forth in board rule and who is responsible for supervising a physician assistant or graduate physician assistant in the temporary absence of the supervising physician.

(5) “Supervising physician” means a physician who is registered with the board as set forth in board rule and who is responsible for the direction and supervision of the activities of and patient services provided by a physician assistant or graduate physician assistant.

(6) A “license to practice medicine and surgery” means a license issued by the board to a person who has graduated from an acceptable school of medicine and who has fulfilled the licensing requirements of this chapter.

(7) A “license to practice osteopathic medicine and surgery” means a license issued by the board to a person who either graduated from an acceptable osteopathic school of medicine subsequent to January 1, 1963, or who has been licensed by endorsement of a license issued by another state where a composite examining board exists and where physicians licensed to practice medicine and surgery and osteopathic physicians take the same examination and hold equal licenses, and who has fulfilled the licensing requirements of this chapter.

(8) A “license to practice osteopathic medicine” means a license issued by the state board of medicine to a person who graduated from an acceptable osteopathic school of medicine and who prior to January 1, 1963, has fulfilled the licensing requirements of this chapter.

(9) The word “person,” the word “he” and the word “his” mean a natural person.

(10) An “acceptable school of medicine” means any school of medicine or school of osteopathic medicine that meets the standards or requirements of a national medical school accrediting organization acceptable to the board.

(11) The word “extern” means a bona fide student enrolled in an acceptable school of medicine who has not received his degree.

(12) The word “intern” or “resident” means any person who has completed a course of study at an acceptable school of medicine and who is enrolled in a postgraduate medical training program.

(13) The term “physician assistant” means any person who is a graduate of an acceptable training program and who is qualified by specialized education, training, experience and personal character and who has been licensed by the board to render patient services under the direction of a supervising and alternate supervising physician. Nothing in this chapter shall be construed to authorize physician assistants to perform those specific functions and duties specifically delegated by law to those persons licensed as pharmacists under chapter 17, title 54, Idaho Code, as dentists or dental hygienists under chapter 9, title 54, Idaho Code, or as optometrists under chapter 15, title 54, Idaho Code.

(14) “Graduate physician assistant” means a person who is a graduate of an approved program for the education and training of physician assistants and who meets all of the requirements in this chapter for licensure, but who:

(a) Has not yet taken and passed the certification examination and who has been authorized by the board to render patient services under the direction of a supervising physician for a period of six (6) months; or

(b) Has passed the certification examination but who has not yet obtained a college baccalaureate degree and who has been authorized by the board to render patient services under the direction of a supervising physician for a period of not more than five (5) years.

History.

I.C., § 54-1803, as added by 1977, ch. 199,

§ 4, p. 536; am. 1998, ch. 177, § 1, p. 658; am. 2010, ch. 89, § 1, p. 170.

STATUTORY NOTES

Prior Laws.

Former § 54-1803, which comprised 1949, ch. 23, § 3, p. 27; am. 1969, ch. 84, § 3, p. 237; am. 1974, ch. 13, § 143, p. 138, was repealed by S.L. 1977, ch. 199, § 1.

Amendments.

The 2010 amendment, by ch. 89, added subsections (4) and (5), and redesignated the

subsequent subsections accordingly; in subsection (13), in the first sentence, substituted “specialized education” for “general education” and inserted “and who has been licensed by the board” and “supervising and alternate supervising,” and in the last sentence, substituted “chapter” for “act”; and added subsection (14).

JUDICIAL DECISIONS

Cited in: *Hirst v. St. Paul Fire & Marine Ins. Co.*, 106 Idaho 792, 683 P.2d 440 (Ct. App. 1984); *Maxfield v. State*, 108 Idaho 493, 700

P.2d 115 (Ct. App. 1985); *State v. Horsley*, 117 Idaho 920, 792 P.2d 945 (1990).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Chiropractors.
Construction.
Drugs.
Naturopathy.
Osteopaths.
Surgery.

Chiropractors.

Practice of chiropractic is not the practice of medicine and surgery. *State v. Fite*, 29 Idaho 463, 159 P. 1183 (1916).

Construction.

Words "physicians and surgeons" are to be taken as used and commonly understood by people at time the law was enacted. This statute seeks to prevent use of drugs, medicines, surgical instruments and appliances by persons unskilled in their use. It does not seek to subject to medical examination by board of medical examiners (department of law enforcement) persons engaged in other branches of the healing art. *State v. Fite*, 29 Idaho 463, 159 P. 1183 (1916).

Drugs.

Colloidal sulphur is a drug within the meaning of this section. *Smith v. State Bd. of Medicine*, 74 Idaho 191, 259 P.2d 1033 (1953).

Antibiotics are drugs within the meaning of this section. *Smith v. State Bd. of Medicine*, 74 Idaho 191, 259 P.2d 1033 (1953).

Naturopathy.

Naturopath violated this section where he performed minor surgery, gave drugs, and

diagnosed with x-rays without a license, since doing such acts constituted the practice of medicine. *Smith v. State Bd. of Medicine*, 74 Idaho 191, 259 P.2d 1033 (1953).

It was incorrect to conclude that the application of the former definition section to naturopathy was necessarily unconstitutional under Idaho Const., Art. I, § 13. *State v. Maxfield*, 98 Idaho 356, 564 P.2d 968 (1977).

If it could be shown that specific practices used by a naturopath were proscribed by the former section to anyone who was not a physician or surgeon, then that naturopath was in direct violation of the provision unless he held a license pursuant to the physician licensure statute. *State v. Maxfield*, 98 Idaho 356, 564 P.2d 968 (1977).

Osteopaths.

Holder of license to practice osteopathy is not authorized to practice medicine or surgery. *State v. Sawyer*, 36 Idaho 814, 214 P. 222 (1923).

Surgery.

This section makes no distinction between major and minor surgery. *Smith v. State Bd. of Medicine*, 74 Idaho 191, 259 P.2d 1033 (1953).

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

A.L.R. — Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Medical malpractice actions, statute of limitations as applicable to actions against unlicensed practitioner. 70 A.L.R.3d 114.

Acupuncture as illegal practice of medicine. 72 A.L.R.3d 1257.

Validity, construction, and effect of statutes or regulations governing practice of veterinary medicine. 8 A.L.R.4th 223.

Wrongful or excessive prescription of drugs as grounds for revocation or suspension of physician's or dentist license to practice. 22 A.L.R.4th 668.

Conviction of offense not directly related to medical practice as grounds for action against physician or other healers. 34 A.L.R.4th 609.

Physician's tort liability for unauthorized disclosure of confidential information about patient. 48 A.L.R.4th 668.

Filing of false insurance claims for medical services as ground for disciplinary actions against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Physician's or surgeon's liability for injury to mother in pregnancy and childbirth cases. 76 A.L.R.4th 1112; 1 A.L.R.5th 269; 2 A.L.R.5th 769; 3 A.L.R.5th 146; 4 A.L.R.5th 148; 4 A.L.R.5th 210; 6 A.L.R.5th 534; 7 A.L.R.5th 1.

Liability of physician or surgeon for injury to child in pregnancy and childbirth cases. 2 A.L.R.5th 811; 4 A.L.R.5th 210; 7 A.L.R.5th 1.

Malpractice in treatment of skin disease, disorder, blemish, or scar. 19 A.L.R.5th 563.

54-1804. Unlicensed practice — Penalties and remedies relating to unlicensed practice. — (1) Under the circumstances described and subject in each case to limitations stated, the following persons, though not holding a license to practice medicine in this state, may engage in activities included in the practice of medicine:

(a) A medical officer of the armed forces of the United States, of the United States public health service, or of the United States department of veterans affairs, while engaged in the performance of his official duties;

(b) A person residing in another state or country and authorized to practice medicine there, who is called in consultation by a person licensed in this state to practice medicine, or who for the purpose of furthering medical education is invited into this state to conduct a lecture, clinic, or demonstration, while engaged in activities in connection with the consultation, lecture, clinic, or demonstration, so long as he does not open an office or appoint a place to meet patients or receive calls in this state;

(c) A person authorized to practice medicine in another state or country while rendering medical care in a time of disaster or while caring for an ill or injured person at the scene of an emergency and while continuing to care for such person;

(d) An extern, intern or resident who is registered with the board as provided in this chapter and while engaged in programs authorized pursuant to rules of the board or a physician assistant licensed by the board;

(e) A person authorized or licensed by this state to engage in activities which may involve the practice of medicine;

(f) A person engaged in good faith in the practice of the religious tenets of any church or religious beliefs;

(g) A person administering a remedy, diagnostic procedure or advice as specifically directed by a physician;

(h) A person rendering aid in an emergency, where no fee for the service is contemplated, charged or received. This exception shall specifically include ski patrollers who are members of the national ski patrol system, inc., and are trained in and holding a current outdoor emergency care (OEC) credential, as issued by the national ski patrol system, inc., while rendering aid in accordance with the standards of training of such credential, where no fee for the service is contemplated, charged or received, and in the course of alpine, nordic or cross-country skiing and other recreational activities conducted in whole or in part at ski areas in the state of Idaho;

(i) A person administering a family remedy to a member of the family;

(j) A person who administers treatment or provides advice regarding the human body and its functions that:

(i) Does not use legend drugs or prescription drugs in such practice;

(ii) Uses natural elements such as air, heat, water and light;

(iii) Only uses class I or class II nonprescription, approved, medical devices as defined in section 513 of the federal food, drug and cosmetic act;

(iv) Only uses vitamins, minerals, herbs, natural food products and their extracts, and nutritional supplements; and who

(v) Does not perform surgery;

(vi) Requires each person receiving services to sign a declaration of informed consent which includes an overview of the health care provider's education which states that the health care provider is not an "M.D." or "D.O." and is not licensed under the provisions of this chapter.

(2) Except as provided in subsection (1) of this section, it shall constitute a felony for any person to practice medicine in this state without a license and upon conviction thereof shall be imprisoned in the state prison for a period not to exceed five (5) years, or shall be fined not more than ten thousand dollars (\$10,000), or shall be punished by both such fine and imprisonment.

(3) Except as provided in subsections (1)(a), (1)(b), and (1)(c) above, it is unlawful for any person to assume or use the title or designation "medical doctor," "medical physician," "osteopathic doctor," "osteopathic physician," "M.D." or "D.O." or any other title, designation, words, letters, abbreviation, sign, card, or device to indicate to the public that such person is licensed to practice medicine pursuant to this chapter unless such person is so licensed, and upon conviction thereof, such person shall be imprisoned not to exceed one (1) year, or shall be fined not more than three thousand dollars (\$3,000), or shall be punished by both fine and imprisonment.

(4) When a person has been the recipient of services constituting the unlawful practice of medicine, whether or not he knew the rendition of the services was unlawful, proof of the rendition of such unlawful services by the recipient or his personal representative in an action against the provider of such services for damages allegedly caused by the services constitutes prima facie evidence of negligence shifting the burden of proof to such provider of unlawful services. The following damages in addition to any other remedies provided by law may be recovered in such an action:

(a) The amount of any fees paid for the unlawful services.

(b) Reasonable attorney's fees and court costs.

(5) The board shall refer all violations of this section made known to it to appropriate prosecuting attorneys. The board may render assistance to a prosecuting attorney in the prosecution of a case pursuant to this section.

History.

I.C., § 54-1804, as added by 1977, ch. 199, § 5, p. 536; am. 1990, ch. 400, § 1, p. 1121;

am. 1993, ch. 271, § 1, p. 907; am. 1998, ch. 177, § 2, p. 658; am. 2011, ch. 301, § 1, p. 864.

STATUTORY NOTES

Cross References.

Prosecuting attorneys, § 31-2601 et seq.

Prior Laws.

Former § 54-1804, which comprised 1949, ch. 23, § 4, p. 27; am. 1969, ch. 84, § 4, p. 237; am. 1974, ch. 13, § 144, p. 138, was repealed by S.L. 1977, ch. 199, § 1.

Amendments.

The 2011 amendment, by ch. 301, substi-

tuted "United States department of veterans affairs" for "veteran's administration" in paragraph (1)(a) and added the second sentence in paragraph (1)(h).

Federal References.

Section 513 of the Federal Food, Drug and Cosmetic Act, referred to in (1)(j)(iii), is compiled as 21 U.S.C.S. § 360c.

JUDICIAL DECISIONS

ANALYSIS

Naturopaths.
Psychologists.

Naturopaths.

Naturopaths do not have a constitutionally protected right to practice medicine without obtaining a license. *Maxfield v. Thomas*, 557 F. Supp. 1123 (D. Idaho 1983).

Psychologists.

One who is entitled to diagnose, treat, and correct mental conditions is also competent to

testify regarding the causes of such conditions; therefore, a psychologist may testify in an industrial commission proceeding on the issue of causation. *O'Loughlin v. Circle A Constr.*, 112 Idaho 1048, 739 P.2d 347 (1987).

Cited in: *Maxfield v. State*, 108 Idaho 493, 700 P.2d 115 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 106-113.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 43 et seq.

54-1805. The state board of medicine established. — (1) There is hereby established in the department of self-governing agencies a state board of medicine to be composed of ten (10) members. The membership of the state board of medicine as it exists on the effective date of this act is hereby confirmed as members of the board for the terms to which they were originally appointed.

(2)(a) The board shall consist of ten (10) members. The director of the Idaho state police shall be a member of the board. Seven (7) members shall be physicians who are residents of this state and engaged in the active practice of medicine in this state, and two (2) members shall be public members.

(b) All physician appointments to the board shall be for six (6) year terms. The physician members shall consist of six (6) members who are licensed to practice medicine and surgery in this state and one (1) member who is licensed to practice osteopathic medicine or osteopathic medicine and surgery in this state. Whenever a term of a member of the board who is licensed to practice medicine and surgery expires or becomes vacant, the Idaho medical association shall nominate three (3) persons licensed to practice medicine and surgery for each such vacancy, and forward such nominations to the governor who shall appoint from among such nominees, one (1) person to be a member of the board to fill such vacancy. Whenever a term of the member of the board who is licensed to practice osteopathic medicine or osteopathic medicine and surgery expires or becomes vacant, the Idaho osteopathic association shall nominate three (3) persons licensed to practice osteopathic medicine or osteopathic medicine and surgery for such vacancy, and shall forward the nominations to the governor who shall appoint from among such nominees one (1) person to be a member of the board to fill such vacancy.

(c) All public members shall be appointed by the governor for three (3) year terms. Public members must reside in the state and be persons of integrity and good reputation who have lived in this state for at least five

(5) years immediately preceding their appointment, who have never been authorized to practice a healing art, and who have never had a substantial personal, business, professional, or pecuniary connection with a healing art or with a medical education or health care facility, except as patients or potential patients.

(3) Appointments to fill vacancies occurring from some other reason than expiration of a term for which a member was appointed, shall be made in the same manner as hereinabove set forth for the unexpired term. The governor may remove any member of the board from the membership of the board, who is guilty of malfeasance, misfeasance or nonfeasance.

(4) The board shall elect a chairman from its membership. The members of the board except for state employees shall be compensated as provided by section 59-509(n), Idaho Code. Five (5) members of the board shall constitute a quorum, and the board may act by virtue of a majority vote of members present at a meeting.

History.

I.C., § 54-1805, as added by 1977, ch. 199, § 6, p. 536; am. 1980, ch. 247, § 64, p. 582;

am. 1990, ch. 106, § 1, p. 213; am. 1998, ch. 39, § 1, p. 166; am. 2000, ch. 469, § 125, p. 1450.

STATUTORY NOTES

Cross References.

Idaho state police, § 67-2901 et seq.

Department of self-governing agencies, § 67-2401 et seq.

Prior Laws.

Former § 54-1805, which comprised 1949, ch. 23, § 5, p. 27; am. 1969, ch. 84, § 5, p. 237; am. 1974, ch. 13, § 145, p. 138, was repealed by S.L. 1977, ch. 199, § 1.

Compiler's Notes.

The phrase "the effective date of this act" in subsection (1) refers to the effective date of S.L. 1977, ch. 199, which was July 1, 1977.

For more on the Idaho medical association, see <http://www.idmed.org>.

For more on the Idaho osteopathic medical association, see http://www.nwosteo.org/northwest_Osteopathic_medical_foundation/Idaho.html.

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 17, 22.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 30 et seq.

54-1806. Powers and duties. — The board shall have the authority to:

(1) Hire or appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners.

(2) Establish pursuant to the administrative procedure act rules for administration of this chapter, including rules governing all activities of persons employed as physician's assistants by persons licensed to practice medicine in this state. The board shall adopt rules pursuant to the administrative procedure act establishing procedures for the receipt of complaints and for the investigation and disposition thereof. Such rules shall provide for notice to a person when the board has authorized the committee to investigate that person and shall provide an opportunity for a person under investigation to meet with the committee or its staff before the initiation of formal disciplinary proceedings by the board.

(3) Conduct investigations and examinations and hold hearings as authorized by this section and by section 54-1806A, Idaho Code.

(4) The board shall have the power in any investigation or disciplinary proceeding pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner consistent with rules adopted by the board pursuant to the administrative procedure act, and upon a determination that there is good cause the board shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records, and papers as it may deem appropriate for any investigation, deposition or hearing. For that purpose the board may issue a subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where such witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid from any funds in the state treasury in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court of any county in this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board to compel compliance with the subpoena by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such formal contested case shall have the same right of subpoena upon making application to the board therefor.

(5) Seek injunctive relief prohibiting the unlawful practice of medicine.

(6) Make and enter into contracts.

(7) Operate, manage, superintend and control the licensure of physicians.

(8) Develop and submit a proposed budget setting forth the amount necessary to perform its functions.

(9) Perform such other duties as set forth in the laws of this state.

(10) Provide such other services and perform such other functions as are necessary to fulfill its responsibilities.

(11) Provide for reasonable fees through rules for administrative costs and assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee has been found to be in violation of this chapter.

(12) Prepare an annual report.

History.

I.C., § 54-1806, as added by 1977, ch. 199, § 7, p. 536; am. 2000, ch. 332, § 2, p. 1112; am. 2010, ch. 88, § 1, p. 169.

STATUTORY NOTES

Cross References.

Board to issue licenses, § 54-1808.

Contempts, § 7-601 et seq.

Disobedience of subpoena as contempt,

§ 19-3010.

Idaho administrative procedure act, § 67-5201 et seq.

Injunctions against violations, § 54-1815.

Licensure by endorsement, § 54-1811.

Licensure by written examination, § 54-1810.

Service of subpoenas in criminal cases, § 19-3007.

Prior Laws.

Former § 54-1806, which comprised 1949, ch. 23, § 6, p. 27; am. 1969, ch. 84, § 6, p. 237; am. 1972, ch. 152, § 1, p. 329, was repealed by S.L. 1977, ch. 199, § 1.

Amendments.

The 2010 amendment, by ch. 88, in subsection (4), in the first sentence, inserted "inves-

tigation or" and substituted "may deem appropriate for any investigation, deposition or hearing" for "may deem appropriate at any hearing," and in the last sentence, substituted "formal contested case" for "proceedings."

Effective Dates.

Section 7 of S.L. 2000, ch. 332, provides: "This act shall be in full force and effect on and after July 1, 2000, and the Board of Medicine is directed to begin rulemaking pursuant to Chapter 52, Title 67, Idaho Code, as required by Section 54-1806(2), Idaho Code. Until such rules are final, the Idaho Rules of Administrative Procedure of the Attorney General to the extent they are not inconsistent with rules already adopted by the Board of Medicine, shall be the rules of practice and procedure for the Board of Medicine."

JUDICIAL DECISIONS

ANALYSIS

Fines.

Immunity.

Fines.

Where a hearing officer issued a protective order, pursuant to the parties' stipulation, preventing a physician from harassing the expert witnesses who were going to testify, the medical board had no contempt power and, thus, had no authority to fine the physician for violating the protective order. *Haw v. Idaho State Bd. of Med.*, 140 Idaho 152, 90 P.3d 902 (2004).

Immunity.

Members of the state board of medicine and the committee on professional discipline have absolute immunity for their actions within the scope of their duties. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916 (9th Cir. 2004).

54-1806A. Medical disciplinary enforcement. — The board of medicine shall create a committee on professional discipline which shall have the authority under the direct supervision and control of the board to conduct professional disciplinary enforcement investigations under this chapter and particularly under sections 54-1810 and 54-1814, Idaho Code, and to recommend appropriate action to the board with respect thereto. The committee on professional discipline shall have no authority to impose sanctions or limitations or conditions on licenses issued under this chapter and shall be authorized only to make recommendations to the board with respect thereto. The board shall provide as follows respecting the committee on professional discipline:

(1) **Membership.** The committee shall consist of five (5) members appointed by the board. Initially, it shall consist of the members of the board of professional discipline as it is constituted on the effective date of this act who shall serve on the committee on professional discipline until the expiration of their current terms. Thereafter, it shall consist of four (4) members licensed to practice medicine and surgery in the state of Idaho, two (2) of whose terms shall expire at midnight on June 30 in each of two (2) successive years, and one (1) member who is an adult Idaho citizen of good

character and reputation who shall not be licensed to practice medicine and surgery in the state of Idaho, whose term shall expire at midnight on June 30 in the year in which no physician member's term shall expire. All terms of appointment shall be for three (3) years. No member of the committee on professional discipline may be appointed after the effective date of this act to serve more than two (2) terms (which shall include terms served on the board of professional discipline prior to the effective date of this act).

(2) Chairman. The board of medicine shall designate one (1) member of the committee as its chairman who shall serve and function in that capacity for one (1) year or until a successor is duly appointed, whichever is later.

(3) Quorum. Three (3) members shall constitute a quorum though no meeting of the committee shall be held without reasonable prior notice of at least three (3) days to all members, which notice may be given by the chairman or any three (3) members. Notice may be waived unanimously; otherwise, it shall be in writing and state the time, place and purpose of the meeting.

(4) Compensation. Members of the committee shall be compensated as provided by section 59-509(n), Idaho Code, from the state board of medicine fund for expenses incurred in the course of serving on the committee.

(5) Conflicts and Disqualification. Members shall disqualify themselves and, on motion of any interested party may, on proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias which interferes with their fair and impartial service.

(6) Additional Powers of the Committee on Professional Discipline. In addition to its other powers, the committee shall be empowered and authorized:

(a) To recommend to the board that it be authorized by the board to initiate or commence proceedings, studies or investigations, to investigate or inquire into misconduct or unprofessional behavior and to recommend that the board take such action with respect thereto as it deems best in the interest of the public and justice, and to obtain the assistance of staff and legal counsel hired by the board of medicine to administer, process and assist in its work.

(b) To recommend to the board that it be authorized by the board to appoint hearing officers or hearing committees to take evidence, conduct hearings and make recommended findings and conclusions to the committee in any matter or proceeding assigned to the committee, which hearing committees shall be of such number and size as the board directs, composed of licensed physicians resident and licensed to practice medicine and surgery in Idaho, who shall serve without pay and for such term as the board may specify, not to exceed one (1) year or during the pendency of any matters referred to it, whichever is longer. All investigations and proceedings of the committee and any hearing officers or hearing committees shall be conducted as provided by rules adopted by the board of medicine pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code.

(c) To recommend findings respecting matters coming before it or before any hearing committee or authorized hearing officer acting on its behalf,

and to recommend conclusions and orders for the consideration of the board dispositive of such proceedings. The committee may make recommendations for the consideration of the board and the board is authorized to enter appropriate orders and take appropriate action including, without limitation, disciplinary orders as provided by Idaho Code respecting misconduct or other grounds for discipline respecting any licensed physician and surgeon licensed to practice medicine and surgery in the state of Idaho, which authority shall, for good cause shown, include the power to suspend, restrict, condition, limit or revoke the license or present or future right or privilege to practice medicine of any physician, surgeon or other person licensed or purporting to be qualified or authorized to practice medicine and surgery in the state of Idaho.

(d) To recommend that the board reprimand by informal admonition any licensed physician and surgeon respecting any matter it finds is minor misconduct. Such reprimand shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(e) To recommend that the board accept the resignation and surrender of license of any physician and surgeon under investigation or prosecution who tenders the same, and to impose terms and conditions in connection therewith as it may deem appropriate in the best interest of the public and of justice.

(f) To recommend that the board order, for good cause, nondisciplinary suspension or transfer to inactive status of any licensed physician and surgeon incapacitated by illness, senility, disability, or addiction to drugs, intoxicants or other chemical or like substances, and to provide terms and conditions therefor, including provisions and conditions controlling reinstatement and any request therefor; provided, this subparagraph shall not be construed to amend or repeal specific legislation expressly dealing with disabled physicians whether heretofore or hereafter enacted by the legislature of the state of Idaho but rather shall be construed as complementary thereto.

(g) To recommend that the board provide by order for reciprocal discipline in cases involving the discipline of a licensed physician and surgeon disciplined in any other jurisdiction, provided that such licensee or applicant shall be entitled to appear and show cause why such order should not apply in his or her case.

(h) To recommend that the board adopt rules to provide for and permit the committee to conduct informal proceedings to encourage fair and expeditious disposition of business, complaints and matters properly coming before it.

(7) Openness. All formal hearings conducted by the board or by the committee under the board's direction and control shall be open to the public. Formal dispositions or other formal actions taken by the board under sections 54-1806 and 54-1806A, Idaho Code, also shall be public. Proceedings, studies and investigations which do not result in formal hearings, formal dispositions or other formal actions by the board shall be conducted in private and shall remain confidential.

(8) Voluntary Restriction of Licensure. A physician may request in writing to the board or the committee a restriction of his license to practice

medicine and the board is authorized to grant such request and, if it deems it appropriate to do so, to attach conditions to the licensure of the physician to practice medicine. The board is also authorized in such cases thereafter to waive the commencement of proceedings under this act or other provisions of the medical practice act if in the interest of justice it determines that such voluntary proceedings have rendered the same unnecessary. Removal of a voluntary restriction on or suspension of licensure to practice medicine shall be subject to the procedures for reinstatement elsewhere in this act, in the medical practice act or by rule of the board; provided also, such reinstatements may be subject to further conditions specially imposed in the individual case as a condition of the order entered therein.

(9) Adjudication of Discipline or Exoneration. The board shall make a determination of the merits of all proceedings, studies and investigations and, if grounds therefor are found to exist, may issue its order:

- (a) Revoking the respondent physician's license to practice medicine;
- (b) Suspending or restricting the respondent physician's license to practice medicine;
- (c) Imposing conditions or probation upon the respondent physician and requiring rehabilitation planning, commitment and conditions upon such respondent physician's licensure;
- (d) Imposing an administrative fine not to exceed ten thousand dollars (\$10,000) for each count or offense; and/or
- (e) Assessing costs and attorney's fees against the respondent physician for any investigation and/or administrative proceeding.

If grounds for any of the foregoing are not found to exist, the board shall enter its order so stating and dismissing the proceedings and shall provide the respondent and, if there be one, the complainant or petitioner in the proceedings a true copy thereof.

(10) Temporary Suspension or Restriction Pending Final Order. The board may temporarily suspend or restrict the license of any physician or enter an appropriate order of temporary probation, ex parte, on its own motion or on verified petition of any person, pending further or final order, without prior hearing, simultaneously with or at any time after the institution of proceedings under this chapter, but only if it first finds, on the basis of a responsible showing which satisfactorily demonstrates that the physician in his capacity as such and for reasons set forth by petition, affidavit, or other verified showing, or determined by it in reliance upon other reliable proof, is causing great harm to the public or to any patient or group of patients, or is imminently likely to cause such harm, for which reason he or she and his or her license to practice medicine should be immediately suspended or restricted or he or she should be specially controlled, suspended in or restricted from the practice of medicine. In such cases, the board may summarily, and ex parte, order temporary conditions of probation, suspension or restriction of said physician and his or her license and authority to practice medicine in the state of Idaho, pending further or final order in the proceedings. Thereafter the physician may, for good cause, request dissolution or amendment of any such temporary order by petition filed with the board, which petition shall be set for prompt

hearing before the board or a designated hearing officer or special committee appointed by the board for that purpose, which officer or committee shall forthwith hear said matter and report to the board its report and recommendations. The board, consistent with due process and the rules adopted by the board pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code, shall rule on such petition for dissolution or amendment with the least amount of delay reasonably possible. Neither the record of the proceeding nor any order entered therein may be used against the respondent physician in any other legal proceeding except upon judicial review as provided elsewhere herein.

(11) **Judicial Review.** All final decisions by the board shall be subject to judicial review pursuant to the procedures of the administrative procedure act, chapter 52, title 67, Idaho Code.

(12) **Protected Action and Communication.** There shall be no liability on the part of and no action for damages against:

(a) Any member of the board, the committee on professional discipline or the staff or officials thereof for any action undertaken or performed within the scope of the functions of the board or the committee under this chapter when acting without malice and in the reasonable belief that such action is warranted; or

(b) Any person providing information or testimony to the board, the committee, or their staff or officials without malice and in the reasonable belief that such information is accurate.

History.

I.C., § 54-1806A, as added by 1976, ch. 293, § 1, p. 1011; am. 1980, ch. 247, § 65, p. 582; am. 1982, ch. 323, § 1, p. 798; am. 1990, ch.

106, § 2, p. 213; am. 1990, ch. 213, § 77, p. 480; am. 1998, ch. 39, § 2, p. 166; am. 2000, ch. 332, § 1, p. 1112.

STATUTORY NOTES

Cross References.

Board of medicine, § 54-1805.

Disabled Physician Act, §§ 54-1831 to 54-1840.

State board of medicine fund, § 54-1809.

Amendments.

This section was amended by two 1990 acts, chapter 106, § 2, effective July 1, 1990, and ch. 213, § 77, effective July 1, 1993.

The 1990 amendment, by ch. 106, § 2 at the end of the introductory paragraph substituted "in this section" for "under this act"; in subsection (4) substituted "59-509(h)" for "59-509(b)"; in subdivision (6)(c) and subsection (7) substituted "section" for "act"; in subsection (10) added subdivisions (d) and (e); and made minor changes in punctuation.

The 1990 amendment, by ch. 213, § 77, at the end of the introductory paragraph substituted "chapter" for "act"; in subdivision (6)(c)

and in subsection (7) substituted "chapter" for "act"; in subsection (8) substituted the heading "Openness" for "Confidentiality" and in the first sentence deleted "private and confidential" following "provided, as respects" and substituted "subject to disclosure according to chapter 3, title 9, Idaho Code," for "closed and confidential" following "proceedings shall be"; and in section (11), in the first sentence, and in subdivision (13)(a) substituted "chapter" for "act".

Compiler's Notes.

The words in parentheses so appeared in the law as enacted.

The phrase "effective date of this act", in subsection (1), were added by S.L. 2000, chapter 332, which was effective on July 1, 2000.

The words "this act", in subsection (8), were added by S.L. 1976, chapter 293, which is codified as this section.

JUDICIAL DECISIONS

ANALYSIS

Due process denied.

Immunity.

Orders of board.

Due Process Denied.

Supreme court vacated the medical board's award of costs and attorney fees against a physician because the physician was denied the opportunity to be heard regarding the amount of costs and fees to be assessed by the board. *Haw v. Idaho State Bd. of Med.*, 140 Idaho 152, 90 P.3d 902 (2004).

Immunity.

Members of the state board of medicine and the committee on professional discipline have absolute immunity for their actions within the scope of their duties. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916 (9th Cir. 2004).

Orders of Board.

The board of discipline, which is an agency governed by the administrative procedures act, has a duty to supplement its decision with findings of fact and conclusions of law, and an agency's order must contain a reasoned statement in support of the decision, including a concise and explicit statement of

the underlying facts of record supporting the findings which must be based exclusively on the evidence in the record and on matters officially noticed in that proceeding. *Woodfield v. Board of Professional Discipline*, 127 Idaho 738, 905 P.2d 1047 (Ct. App. 1995).

Pursuant to subsection (8), the state board of medicine (board) had the discretion to impose sanctions, but it abused its discretion in concluding there was no reasonable basis for apportioning its award of costs and fees against the doctor. The board had to consider how many of the claims the doctor prevailed on, the overall success in supporting the board's allegations and the amount of time and effort devoted to proving the claimed misconduct for which discipline was imposed, as opposed to the total time spent in pursuing all of the allegations. *Haw v. State Bd. of Med.*, 143 Idaho 51, 137 P.3d 438 (2006).

Cited in: *Pearl v. Bd. of Prof'l Discipline of Idaho State Bd. of Med.*, 137 Idaho 107, 44 P.3d 1162 (2002).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 65 et seq.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 52 et seq.

A.L.R. — Pretrial discovery in disciplinary proceedings against physician. 28 A.L.R.3d 1440.

Mandamus to compel disciplinary investigation or action against physician or attorney. 33 A.L.R.3d 1429.

Admissibility in evidence, on issue of negligence, of codes or standards of safety issued or sponsored by governmental body or by voluntary association. 58 A.L.R.3d 148.

Entrapment as a defense in proceedings to revoke or suspend license to practice law or medicine. 61 A.L.R.3d 357.

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 A.L.R.3d 944.

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine. 51 A.L.R.4th 1147.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist. 74 A.L.R.4th 969.

54-1807. State board of medicine — Registration. — Externs, interns and residents must register with the board prior to the commencement of any activities constituting the practice of medicine in this state. Registration shall include disclosure of the applicant's prior education and training, the program or course of study the extern, intern or resident intends to follow, the physicians or group of physicians who will supervise the program or course of study and such other information as the board deems relevant. The board shall reserve the right to approve any such program or course of study and shall require registration by the supervising

physician. A registration fee shall be fixed by the board and registration must be renewed annually.

History.

I.C., § 54-1807, as added by 1977, ch. 199, § 8, p. 536; am. 1998, ch. 177, § 3, p. 658; am. 2010, ch. 89, § 2, p. 170.

STATUTORY NOTES**Prior Laws.**

Former § 54-1807, which comprised 1949, ch. 23, § 7, p. 27; am. 1969, ch. 84, § 7, p. 237, was repealed by S.L. 1977, ch. 199, § 1.

subsection (1) designation and subsection (2), which dealt with licensing requirements for physician assistants. See § 54-1807A.

Amendments.

The 2010 amendment, by ch. 89, deleted the

54-1807A. Physician assistants — Supervising physicians — Physician assistant advisory committee. — (1) Physician assistants must be licensed by the board prior to the commencement of activities which may involve the practice of medicine in this state. The licensure requirements for physician assistants shall include passage of an examination acceptable to the board and submission of a completed application to the board on forms furnished by the board. All applicants for original licensure as a physician assistant shall submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded by the board to the Idaho department of law enforcement and to the federal bureau of investigation identification division. The board shall determine and limit the scope of activities of each physician assistant on the basis of completed courses of study or programs of instruction received. Upon licensure, the board shall authorize each physician assistant to assist a physician or group of physicians who are qualified and approved by the board to supervise physician assistants to engage in activities as limited by the board. The board shall fix a license fee. All physician assistants shall renew their licenses annually.

(2) After a supervising physician or alternate supervising physician receives board approval to supervise a physician assistant, the physician may delegate medical services to the physician assistant as set forth in the delegation of services agreement on forms approved by and filed with the board. The physician assistant may perform delegated medical services in any setting authorized by the supervising physician or alternate supervising physician and the board, including clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other health care institutions.

(3) The supervising physician and alternate supervising physician are responsible for all aspects of the performance of a physician assistant whether or not the supervising physician or alternate supervising physician actually pays the physician assistant a salary. The supervising physician and alternate supervising physician are responsible for supervising the physician assistant and ensuring that the medical services performed by the

physician assistant are within the physician assistant's scope of training and experience and have been properly delegated by the supervising physician or alternate supervising physician.

(4) Supervision by a supervising physician or alternate supervising physician shall be continuous but shall not be construed as necessarily requiring the constant physical presence of the supervising physician or alternate supervising physician at the time and place where medical services are performed by the physician assistant.

(5) A supervising physician or alternate supervising physician shall not delegate to a physician assistant the performance of any medical services for which the supervising physician or alternate supervising physician does not have training or experience and does not perform.

(6) A physician assistant or a group of physician assistants may independently own a medical practice in this state provided that the supervising physician, alternate supervising physician and each physician assistant comply with all requirements of this section and board rules. Each physician assistant must be licensed, registered or certified as a physician assistant in any state, territory or jurisdiction of the United States for at least two (2) years before the physician assistant may independently own a practice in this state.

(7) A physician assistant advisory committee is hereby established as follows:

(a) The physician assistant advisory committee shall consist of three (3) members appointed by the board. In making appointments to fill a vacancy created by the expiration of a term, the board shall give consideration to recommendations made by professional organizations of physician assistants and physicians. The board shall send notice to such professional organizations requesting recommendations. If recommendations from such professional organizations are not received by the board within sixty (60) days of notification, the board may appoint any qualified individual without consideration of any such recommendations. In the event of a vacancy in any unexpired term, the professional organizations may recommend, as soon as practical, at least two (2) and not more than three (3) persons to fill that vacancy. As soon as practical, the board shall appoint one (1) person to complete the unexpired term. If such professional organizations do not provide recommendations, the board shall appoint a person to complete the unexpired term without consideration of any such recommendations. The board may remove any committee member for misconduct, incompetency or neglect of duty after giving the member a written statement of the charges and an opportunity to be heard thereon. The executive director of the Idaho state board of medicine shall serve as the executive director to the physician assistant advisory committee.

(b) Each member of the physician assistant advisory committee shall be currently licensed as a physician assistant in Idaho and shall have actively practiced as a physician assistant in Idaho for three (3) years immediately preceding appointment. Members will serve a term of three (3) years and terms will be staggered. Members may serve two (2)

successive terms. The committee shall elect a chairman from its membership. The committee shall meet as often as necessary to fulfill its responsibilities. Members will be compensated according to section 59-509(h), Idaho Code.

(c) The physician assistant advisory committee shall not have authority to revoke licenses or impose limitations or conditions on licenses issued pursuant to this chapter. The committee has authority to make recommendations to the board. The board shall make all final decisions with respect thereto.

(d) The physician assistant advisory committee shall work in the following areas in conjunction with and make recommendations to the board and shall perform other duties and functions assigned to it by the board, including:

- (i) Evaluating the qualifications of applicants for licensure and registration;
- (ii) Performing investigations of misconduct and making recommendations regarding discipline;
- (iii) Maintaining a list of currently licensed physician assistants and graduate physician assistants in this state; and
- (iv) Advising the board on rule changes necessary to license and regulate physician assistants and graduate physician assistants in this state.

History.

I.C., § 54-1807A, as added by 2010, ch. 89, § 3, p. 170.

STATUTORY NOTES

Compiler's Notes.

The Idaho central criminal history database, referred to in subsection (1), is the state's central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.state.id.us/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in subsection (1), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjisd/iafis.htm>.

54-1808. Board to issue licenses. — (1) The board shall issue licenses to practice medicine and surgery, and osteopathic medicine and surgery, to persons who have qualified therefor in accordance with the provisions of this act. The board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by section 54-1814, Idaho Code. Provided, that the board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. Such licenses shall be issued after payment of a licensing fee in an amount to be fixed by the board, and such licenses shall be issued for a period of not less than one (1) year nor more than five (5) years, the exact period to be fixed by the board. Licenses to practice medicine and surgery, osteopathic medicine and surgery, and osteopathic medicine shall be renewed on their expiration upon completion of a renewal

application and upon payment of a renewal fee, the amount of which is to be fixed by the board.

(2) The board may renew on an inactive basis, the license of a physician who is not practicing medicine in this state. The board shall fix and collect an inactive license fee for each inactive license renewal, and each inactive license shall be issued for a period of not less than one (1) year nor more than five (5) years, the exact period to be fixed by the board. A physician holding an inactive license may not engage in the practice of medicine in this state. If a physician wishes to convert his inactive license to an active license, he must account to the board for that period of time in which he held an inactive license.

(3) Whenever the board determines that an applicant for a license to practice medicine and surgery, or osteopathic medicine and surgery is not qualified for such a license pursuant to the provisions of this act, the board shall notify the applicant by certified mail of its denial of licensure and the reasons for denial.

History.

I.C., § 54-1808, as added by 1977, ch. 199, § 9, p. 536.

STATUTORY NOTES

Prior Laws.

Former § 54-1808, which comprised 1949, ch. 23, § 8, p. 27; am. 1969, ch. 84, § 8, p. 237, was repealed by S.L. 1977, ch. 199, § 1.

(3), refers to S.L. 1977, ch. 199, which is codified as §§ 54-1801 to 54-1806, 54-1807, 54-1808, and 54-1810 to 54-1814.

Compiler's Notes.

The term "this act," in subsections (1) and

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

- Compliance with statutory requirements.
- Constitutionality.
- Discretion of board.
- Osteopaths.
- Police power.
- Validity and purpose.

Compliance with Statutory Requirements.

The state board of medical examiners is authorized to refuse to grant license because the applicant did not satisfactorily meet the requirements of the intent and provisions of the act. *Brown v. Collister*, 5 Idaho 589, 51 P. 417 (1897).

A diploma from a regularly chartered medical school which had a bona fide existence at the time the diploma was granted, and a compliance otherwise of the statutory requirements, was all the proof necessary to establish a medical education, and the medi-

cal board had no authority to require any other facts. *Vadney v. State Bd. of Medical Exmrs.*, 19 Idaho 203, 112 P. 1046 (1911).

Constitutionality.

The legislative enactment providing for a state board of medical examiners, and authorizing the governor to appoint such board without the concurrence of the senate, does not contravene the constitution. *In re Inman*, 8 Idaho 398, 69 P. 120 (1902).

Discretion of Board.

This section is not mandatory and leaves it to the legal discretion of the medical board to

determine whether applicant shall be licensed to practice medicine without examination or may be required to pass examination before issuing to him such license. *Barton v. Schmershall*, 21 Idaho 562, 122 P. 385 (1912).

Osteopaths.

Holder of license to practice osteopathy is not entitled to practice medicine or surgery. *State v. Sawyer*, 36 Idaho 814, 214 P. 222 (1923).

Police Power.

The police power of a state extends to the prevention of practice by a physician who has been found guilty in federal court of cheating and defrauding the government. *Craft v. Balderston*, 58 Idaho 650, 78 P.2d 122 (1938).

Validity and Purpose.

In enacting this law, legislature had in mind protection of the people of the state against those not qualified for the practice of medicine and surgery. *Barton v. Schmershall*, 21 Idaho 562, 122 P. 385 (1912).

Legislature, recognizing drugs and surgical instruments to be dangerous in hands of the unskilled, sought by this chapter to reach and prohibit pretenders rather than practitioners of other branches of the healing art. *State v. Fite*, 29 Idaho 463, 159 P. 1183 (1916).

Legislature has power to prescribe qualifications for those engaged in practice of medicine and surgery and to prohibit or penalize such practice by one not possessing such license. *State v. Sawyer*, 36 Idaho 814, 214 P. 222 (1923).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 17 et seq.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

A.L.R. — Tort claim for negligent credentialing of physician. 98 A.L.R.5th 533.

54-1809. State board of medicine fund — Creation of. — All fees of any kind collected under the provisions of this act shall be deposited in the state treasury to the credit of a separate fund to be known as the state board of medicine fund and all such moneys as are now in or may hereafter come into such fund are hereby appropriated to the board for carrying out the purposes and objects of this act, and to pay all costs and expenses incurred in connection therewith. All moneys in the state board of medicine fund on the effective date of this act are hereby transferred and appropriated to the state board of medicine fund hereby created. Moneys shall be paid out of the fund upon warrants drawn by the state controller upon presentation of proper vouchers approved by the board.

History.

1949, ch. 23, § 9, p. 27; am. 1969, ch. 84, § 9, p. 237; am. 1994, ch. 180, § 101, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Compiler's Notes.

The term "this act" in the first sentence refers to S.L. 1949, ch. 23, which is codified as §§ 54-1809 and 54-1815. Probably the reference should now read "the medical practice act."

The phrase "effective date of this act", in the second sentence, was added by S.L. 1969, chapter 84, which was effective on March 5, 1969.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 101 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

Cited in: State ex rel. State Bd. of Medicine v. Smith, 80 Idaho 267, 328 P.2d 581 (1958); State ex rel. State Bd. of Medicine v. Smith, 81 Idaho 103, 337 P.2d 938 (1959).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 11. **C.J.S.** — 70 C.J.S., Physicians and Surgeons, § 5.

54-1810. Licensure by written examination. — Any person seeking to be licensed to practice medicine and surgery or osteopathic medicine or osteopathic medicine and surgery in this state must successfully complete the following requirements before a license will be issued:

(1) Each applicant must submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a medical school acceptable to the board and successful completion of a postgraduate training program acceptable to the board. The application shall require a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant must submit a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded to the Idaho department of law enforcement [Idaho state police] and the federal bureau of investigation identification division for this purpose.

(2) Each applicant must pass an examination conducted by or acceptable to the board which shall thoroughly test the applicant's fitness to practice medicine. If an applicant fails to pass the examination on two (2) separate occasions, he shall not be eligible to take the examination for at least one (1) year, and before taking the examination again, he must make a showing to the board that he has successfully engaged in a course of study for the purpose of improving his ability to engage in the practice of medicine. Applicants who fail two (2) separate examinations in another state, territory, or district of the United States or Canada, must make the same showing of successful completion of a course of study prior to examination for licensure.

(3) The board may require an applicant to be personally interviewed by the board or a designated committee of the board. Such an interview shall be limited to a review of the applicant's qualifications and professional credentials.

History. § 10, p. 536; am. 1999, ch. 116, § 1, p. 350; I.C., § 54-1810, as added by 1977, ch. 199, am. 2003, ch. 126, § 1, p. 376.

STATUTORY NOTES

Prior Laws. Former § 54-1810, which comprised 1949, ch. 23, § 10, p. 27; am. 1969, ch. 84, § 10, p. 237, was repealed by S.L. 1977, ch. 199, § 1.

Compiler's Notes. The Idaho central criminal history database, referred to in subsection (1), is the state's central repository of criminal history,

maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.state.id.us/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in subsection (1), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjis/iafis.htm>.

The bracketed insertion near the end of subsection (1) was added by the compiler as the Idaho department of law enforcement was renamed as the Idaho state police by S.L. 2000, chapter 469.

Effective Dates.

Section 3 of S.L. 2003, ch. 126 declared an emergency retroactively to May 1, 2002 and approved March 27, 2003.

JUDICIAL DECISIONS

Duty to Report.

Although a doctor's alleged misconduct of performing unnecessary procedures for financial gain might have been unlawful and in violation of public policy, the discharged doctor was not under a duty to report it to the

Idaho board of medicine under this section or § 54-1818; thus, "unclean hands" argument failed with regard to the doctor's claim for wrongful termination in violation of public policy. *Thomas v. Med. Ctr. Physicians, P.A.*, 138 Idaho 200, 61 P.3d 557 (2002).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeals.

Constitutionality.

Diploma requirement.

Discretionary powers.

Osteopaths.

Prior qualification.

Appeals.

The proper court may review by certiorari an order of the state board of medical examiners refusing to grant a license to an applicant. *Vadney v. State Bd. of Medical Exmrs.*, 19 Idaho 203, 112 P. 1046 (1911).

Constitutionality.

Provisions of this section which require applicants for license to practice to be graduates of reputable school of medicine, and which make board of examiners judge of what constitutes a reputable school, are reasonable police regulations. In *re Inman*, 8 Idaho 398, 69 P. 120 (1902); *Barton v. Schmershall*, 21 Idaho 562, 122 P. 385 (1912).

The requirement of former statute governing licensing that a diploma from an accredited medical school be presented to the state medical board prior to issuance of license to practice medicine did not violate either the due process clause of the Fourteenth Amendment to the United States Constitution or Idaho Const., Art. I, § 13, since requiring accreditation was a rational means of insuring that persons applying for licenses met minimum standards of competency. The possibility that some otherwise qualified persons might, thereby, be excluded did not make the statute irrational. *State v. Kellogg*, 102 Idaho 628, 636 P.2d 750 (1981).

Diploma Requirement.

The state board of medicine did not err in refusing to allow a naturopath holding a degree in naturopathy to take the examination for licensing as a physician since former section governing licensure, which required a diploma from an accredited medical school prior to licensure, reflected the legislature's intent that naturopaths who did not hold a license from an accredited medical school should not qualify for a license to practice medicine, with all the privileges attendant to such license. *State v. Kellogg*, 102 Idaho 628, 636 P.2d 750 (1981).

Discretionary Powers.

Board of medical examiners, in examining applicant for a license to practice medicine, is required to exercise judgment and discretion in granting or refusing license and, in so doing, exercises quasi judicial functions. *Raaf v. State Bd. of Medical Exmrs.*, 11 Idaho 707, 84 P. 33 (1906).

Discretionary power is conferred upon board of examiners to determine questions of fact presented by application for license, and board may either grant or refuse a license according to the judgment of board. *Barton v. Schmershall*, 21 Idaho 562, 122 P. 385 (1912).

Osteopaths.

One licensed to practice osteopathy is not authorized to practice medicine or surgery.

State v. Sawyer, 36 Idaho 814, 214 P. 222 (1923).

Prior Qualification.

Where applicant for license to practice medicine and surgery was resident of Idaho and engaged in the practice of his profession under the provisions of the law of 1887, and had complied with all provisions of the law of 1899, it was not criminal for him to pursue his profession, although board of medical examiners refused to issue his license. *State v. Cooper*, 11 Idaho 219, 81 P. 374 (1905).

State board of medical examiners had no authority to refuse a license to applicant who was engaged in the practice of medicine and surgery under former law, on ground that college issuing medical diploma under which he was practicing was not a "reputable college of medicine in good standing," as former law provides that the diploma referred to must be from some "regularly chartered medical school" having a bona fide existence at the time when said diploma was granted. *Vadney v. State Bd. of Medical Exmrs.*, 19 Idaho 203, 112 P. 1046 (1911).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 17 et seq.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 15 et seq.

54-1811. Licensure by endorsement. — Any person seeking to be licensed to practice medicine in this state who is licensed to practice medicine in another state must successfully complete the following requirements before a license to practice medicine will be issued:

(1) Each applicant must submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a medical school acceptable to the board and successful completion of a postgraduate training program acceptable to the board and which contains proof that the applicant has any one (1) of the following qualifications:

(a) The applicant is a diplomate of the national board of medical examiners or the national board of examiners for osteopathic physicians [national board of osteopathic medical examiners] and surgeons;

(b) The applicant holds a valid, unrevoked, unsuspended license to practice medicine and surgery, or osteopathic medicine and surgery in a state, territory or district of the United States or Canada, and the applicant demonstrates that he possesses the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state. The board may require further examination to establish such qualifications.

(2) The application shall require a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant must submit a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded to the Idaho department of law enforcement [Idaho state police] and the federal bureau of investigation identification division for this purpose.

(3) The board may require an applicant to be personally interviewed by the board or a designated committee of the board. The interview shall be limited to a review of the applicant's qualifications and professional credentials.

History.

I.C., § 54-1811, as added by 1977, ch. 199, § 11, p. 536; am. 1999, ch. 116, § 2, p. 350; am. 2003, ch. 126, § 2, p. 376.

STATUTORY NOTES**Prior Laws.**

Former § 54-1811, which comprised 1949, ch. 23, § 11, p. 27; am. 1969, ch. 84, § 11, p. 237, was repealed by S.L. 1977, ch. 199, § 1.

Compiler's Notes.

For more on national board of medical examiners, see <http://www.nbme.org>.

The bracketed insertion in paragraph (1)(a) was added by the compiler to correct the name of the referenced organization. See <http://www.nbme.org>.

The Idaho central criminal history database, referred to in subsection (2), is the state's central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.state.id.us/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in subsection (2), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjis/iafis.htm>.

The bracketed insertion near the end of subsection (2) was added by the compiler as the Idaho department of law enforcement was renamed as the Idaho state police by S.L. 2000, chapter 469.

Effective Dates.

Section 3 of S.L. 2003, ch. 126 declared an emergency retroactively to May 1, 2002 and approved March 27, 2003.

54-1812. Graduates of medical schools located outside of the United States and Canada. — In addition to the other licensure requirements of this chapter, the board may require by rule and regulation that graduates of medical schools located outside of the United States and Canada provide additional information to the board concerning the medical school attended. The board may also require such graduates to take an additional examination. The board may refuse to issue a license to an applicant who graduated from a medical school located outside of the United States and Canada if it finds that such applicant does not possess the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state.

History.

I.C., § 54-1812, as added by 1977, ch. 199, § 12, p. 536; am. 1980, ch. 146, § 1, p. 315.

STATUTORY NOTES**Prior Laws.**

Former § 54-1812, which comprised 1949, ch. 23, § 12, p. 27; am. 1969, ch. 84, § 12, p. 237, was repealed by S.L. 1977, ch. 199, § 1.

Effective Dates.

Section 2 of S.L. 1980, ch. 146 declared an emergency. Approved March 24, 1980.

54-1813. Temporary license and registration. — (1) The board may by rule provide for the issuance of a temporary license to a person licensed to practice medicine and surgery or osteopathic medicine and surgery in some other state, territory or district of the United States or Canada or to a person who is a diplomate of the national board of medical examiners or a diplomate of the national board of examiners for osteopathic physicians and surgeons [national board of osteopathic medical examiners] or to a physician assistant, provided that such temporary license shall be issued only to

persons who have made an application for a permanent license in this state. The board shall fix and collect a fee for a temporary license and it shall be valid from the date of issuance to the next regular meeting of the board, unless extended by the board.

(2) The board may by rule provide for temporary registration of externs, interns, residents. The board shall fix and collect a fee for the temporary registration and it shall specify the time period of the temporary registration.

History.

I.C., § 54-1813, as added by 1977, ch. 199,
§ 13, p. 536; am. 1998, ch. 177, § 4, p. 658.

STATUTORY NOTES**Prior Laws.**

Former § 54-1813, which comprised 1949, ch. 23, § 13, p. 27; am. 1969, ch. 84, § 13, p. 237, was repealed by S.L. 1977, ch. 199, § 1.

The bracketed insertion in the first sentence in subsection (1) was added by the compiler to correct the name of the referenced organization. See <http://www.nbome.org>.

Compiler's Notes.

For more on national board of medical examiners, see <http://www.nbme.org>.

54-1814. Grounds for medical discipline. — Every person licensed to practice medicine, licensed to practice as a physician assistant or registered as an extern, intern or resident in this state is subject to discipline by the board pursuant to the procedures set forth in this chapter and rules promulgated pursuant thereto upon any of the following grounds:

(1) Conviction of a felony, or a crime involving moral turpitude, or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude.

(2) Use of false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of this act.

(3) Practicing medicine under a false or assumed name in this or any other state.

(4) Advertising the practice of medicine in any unethical or unprofessional manner.

(5) Knowingly aiding or abetting any person to practice medicine who is not authorized to practice medicine as provided in this chapter.

(6) Performing or procuring an unlawful abortion or aiding or abetting the performing or procuring of an unlawful abortion.

(7) The provision of health care which fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public.

(8) Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for referral.

(9) Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.

(10) Inability to obtain or renew a license to practice medicine, or revocation of, or suspension of a license to practice medicine by any other state, territory, district of the United States or Canada, unless it can be shown that such action was not related to the competence of the person to practice medicine or to any conduct designated herein.

(11) Prescribing or furnishing narcotic or hallucinogenic drugs to addicted persons to maintain their addictions and level of usage without attempting to treat the primary condition requiring the use of narcotics.

(12) Prescribing or furnishing narcotic, hypnotic, hallucinogenic, stimulating or dangerous drugs for other than treatment of any disease, injury or medical condition.

(13) Failure to safeguard the confidentiality of medical records or other medical information pertaining to identifiable patients, except as required or authorized by law.

(14) The direct promotion by a physician of the sale of drugs, devices, appliances or goods to a patient that are unnecessary and not medically indicated.

(15) Abandonment of a patient.

(16) Willfully and intentionally representing that a manifestly incurable disease or injury or other manifestly incurable condition can be permanently cured.

(17) Failure to supervise the activities of externs, interns, residents, nurse practitioners, certified nurse-midwives, clinical nurse specialists, or physician assistants.

(18) Practicing medicine when a license pursuant to this chapter is suspended, revoked or inactive.

(19) Practicing medicine in violation of a voluntary restriction or terms of probation pursuant to this chapter.

(20) Refusing to divulge to the board upon demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment, or infirmity.

(21) Commission of any act constituting a felony or commission of any act constituting a crime involving moral turpitude.

(22) Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.

History.

I.C., § 54-1814, as added by 1977, ch. 199, § 14, p. 536; am. 1979, ch. 58, § 1, p. 152; am.

1992, ch. 73, § 1, p. 208; am. 1998, ch. 118, § 15, p. 435; am. 1998, ch. 177, § 5, p. 658; am. 2000, ch. 332, § 3, p. 1112.

STATUTORY NOTES

Prior Laws.

Former § 54-1814, which comprised 1949, ch. 23, § 14, p. 27; am. 1974, ch. 13, § 146, p. 138, was repealed by S.L. 1977, ch. 199, § 1.

Amendments.

This section was amended by two 1998 acts — ch. 118, § 15, effective July 1, 1998, and ch.

177, § 5, effective July 1, 1998 — which do not conflict and have been compiled together.

The 1998 amendment, by ch. 118, § 15, in subdivision (17), inserted “certified nurse-midwives, clinical nurse specialists” preceding “or physician’s assistants” and deleted “as required by the registration documentation of this chapter.”

The 1998 amendment, by ch. 177, § 5, in the introductory language, inserted "licensed to practice as a physician assistant" preceding "or registered," inserted "or" preceding "resident," deleted "or physician's assistant" preceding "in this state"; in subdivision (16), substituted "Willfully" for "Wilfully"; and in subdivision (17), substituted "physician assistants" for "physician's assistants."

Compiler's Notes.

The term "this act" in subsection (2) refers to S.L. 1977, ch. 199, which is codified as §§ 54-1801 to 54-1806, 54-1807, 54-1808, and 54-1810 to 54-1814.

Section 15 of S.L. 1977, ch. 199 read: "Nothing in this act shall be construed to invalidate the license of any person holding a valid,

unrevoked and unsuspended license to practice medicine and surgery, osteopathic medicine and surgery and osteopathic medicine in this state on the effective date [July 1, 1977] of this act. The rules and regulations of the board in effect at the time of the enactment of this act, and the fees fixed by the statutes repealed by this act shall remain in full force and effect until the board has adopted supplemental rules and regulations pursuant to this chapter."

Section 16 of S.L. 1977, ch. 199 read, "[I]f [t]he provisions of this chapter or the application of such provision[s] to any person or circumstance is [are] declared invalid for any reason, such declaration shall not affect the validity of [the] remaining portions of this chapter."

JUDICIAL DECISIONS

ANALYSIS

Attorney's fees.
Constitutionality.
Division of fees or gifts.
Due process.
Duty to report.
Effect of jury verdict.
Evidence.
Findings insufficient.
Findings sufficient.
Fines.
Regulations consistent with statute.
Standard of care.

Attorney's Fees.

Where state medical board did not act without a reasonable basis in law or fact in malpractice action against doctor for violations of this section, no attorney's fees were granted under this section. *Krueger v. Board of Professional Discipline*, 122 Idaho 577, 836 P.2d 523 (1992), cert. denied, 507 U.S. 918, 113 S. Ct. 1277, 122 L. Ed. 2d 672 (1993).

Constitutionality.

Subsection (7) of this section is not unconstitutionally vague on its face, even though the board of professional discipline has not promulgated any regulations to further define or explain it. The language is similar to the well-accepted definition of medical malpractice contained in § 6-1012 and is a codification of existing case law. Therefore, the statute is, sufficient to notify medical practitioners that they could be disciplined for failure to conform to the community standards. *Krueger v. Board of Professional Discipline*, 122 Idaho 577, 836 P.2d 523 (1992), cert. denied, 507 U.S. 918, 113 S. Ct. 1277, 122 L. Ed. 2d 672 (1993).

Division of Fees or Gifts.

Because alleged oral contract, providing

that, when partner left firm, remaining partner would continue to make surgical referrals to partner, contemplated no division or agreement to divide fees or gifts, nor was there a giving or receiving of any remuneration in exchange for referrals, the oral contract was not the form of consideration strictly proscribed by statutes, and the oral contract could not be termed illegal as a matter of law. *Miller v. Haller*, 129 Idaho 345, 924 P.2d 607 (1996).

Due Process.

Where complaint only provided notice that there was alleged to have been a delay in performance of the C-section, doctor's constitutional right to procedural due process was violated. Complaint failed to adequately notify him that board of professional discipline was charging him with administering inappropriate medication which caused fetal distress, and, thus, he lacked a fair opportunity to gather witnesses and prepare a defense. Therefore, board's conclusion that care of patient did not meet community standard of care was properly overturned. *Krueger v. Board of Professional Discipline*, 122 Idaho 577, 836 P.2d 523 (1992), cert. denied, 507

U.S. 918, 113 S. Ct. 1277, 122 L. Ed. 2d 672 (1993).

Because the board of medicine did not provide the psychiatrist with specific notice of all charges brought against him for which he was disciplined, it violated his due process rights. *Cooper v. Board of Prof'l Discipline of Idaho State Bd. of Med.*, 134 Idaho 449, 4 P.3d 561 (2000).

Physician had not been denied due process by the medical board's failure to promulgate regulations setting forth clearly defined standards with respect to the use of injectable hormones, because one of the purposes of the Medical Practice Act was to assure the public health, safety and welfare, and consistent with that purpose the board could discipline the physician for providing health care that failed to meet the applicable standard of care, even if it could not prove that his patients had suffered any physical harm. *Haw v. Idaho State Bd. of Med.*, 140 Idaho 152, 90 P.3d 902 (2004).

Subsection (7) is sufficient to notify medical practitioners that they could be disciplined for failure to conform to community standards, and it is not unconstitutionally vague, even though the Idaho board of medicine has not promulgated any regulations to further define and explain the statute. *Haw v. Idaho State Bd. of Med.*, 140 Idaho 152, 90 P.3d 902 (2004).

There is no requirement that the violation of the community standard must have caused physical harm to a physician's patients, where subsection (7) does not require physical harm before the Idaho board of medicine may act. *Haw v. Idaho State Bd. of Med.*, 140 Idaho 152, 90 P.3d 902 (2004).

Duty to Report.

In a physician's suit against medical center for wrongful termination and retaliatory discharge, the appellate court held that § 54-1818 required licensed physicians to report the conduct of other licensed physicians that violated the provisions of this section, and the physician's failure to report the allegations of another physician's misconduct to the Idaho board of medicine did not constitute a defense for the medical center. *Thomas v. Med. Ctr. Physicians, P.A.*, 138 Idaho 200, 61 P.3d 557 (2002).

Effect of Jury Verdict.

Jury in an independent action concluded that doctor was not liable for malpractice in care of certain patient and doctor moved the board of professional discipline to have the jury verdict received in evidence to show that he had met the local community standard of care and that such verdict was a judicially cognizable fact which the board should have considered. Since the question the jury answered was "was doctor's negligence the prox-

imate cause of patient's injuries" and the negative answer could have indicated any number of things, the verdict was not entitled to any preclusive effect. *Krueger v. Board of Professional Discipline*, 122 Idaho 577, 836 P.2d 523 (1992), cert. denied, 507 U.S. 918, 113 S. Ct. 1277, 122 L. Ed. 2d 672 (1993).

A determination of a violation of the standard of care must be supported by expert testimony establishing the community's generally accepted standard of care required of the physician under the circumstances of each case under scrutiny. The determination may involve evaluation of the evidence by the board of professional discipline using the personal, specialized knowledge, technical competence and experience of the board, which is comprised of members of the medical community. *Woodfield v. Board of Professional Discipline*, 127 Idaho 738, 905 P.2d 1047 (Ct. App. 1995).

Evidence.

The district court erred in affirming the board of discipline's revocation of the physician's license, since there were five instances where the evidence in the record did not support the board's findings. *Paul v. Professional Discipline Bd. of State Bd. of Med.*, 134 Idaho 838, 11 P.3d 34 (2000).

Findings Insufficient.

Because the board of medicine did not make findings that reconciled the patient's account with the testimony of other witnesses concerning the events of the day on which the sexual encounter allegedly took place, the record as a whole did not support the finding that the patient had a sexual encounter with the psychiatrist, and the disciplinary action was dismissed. *Cooper v. Board of Prof'l Discipline of Idaho State Bd. of Med.*, 134 Idaho 449, 4 P.3d 561 (2000).

Findings Sufficient.

In an administrative case involving the revocation of a physician's license to practice medicine, there was substantial, competent evidence supporting the board of medicine's conclusion that the doctor failed to provide proper medical care to two patients. *Laurino v. Bd. of Prof'l Discipline*, 137 Idaho 596, 51 P.3d 410 (2002).

Fines.

Where a hearing officer issued a protective order, pursuant to the parties' stipulation, preventing a physician from harassing the expert witnesses who were going to testify, the medical board had no contempt power and, thus, had no authority to fine the physician for violating the protective order. *Haw v. Idaho State Bd. of Med.*, 140 Idaho 152, 90 P.3d 902 (2004).

Regulations Consistent with Statute.

A regulation which identified “sexual contact, misconduct, exploitation and intercourse” as prohibited abusive or exploitative conduct arising out of the trust and confidence relationship was consistent with the medical practice statute. *Levin v. State Bd. of Med.*, 133 Idaho 413, 987 P.2d 1028 (1999).

Standard of Care.

The board of professional discipline of the state board of medicine had the burden to show, among other things, what physician’s training and experience had been, as those factors help determine the standard of care physician was expected to meet. *Woodfield v. Board of Professional Discipline*, 127 Idaho 738, 905 P.2d 1047 (Ct. App. 1995).

In Idaho, a physician is subject to medical discipline for providing health care which

fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public. *Woodfield v. Board of Professional Discipline*, 127 Idaho 738, 905 P.2d 1047 (Ct. App. 1995).

Where the medical board found credible the expert physicians it called to testify who appeared to be representative of the community, the board’s findings as to the standard of care were supported by substantial evidence and were not clearly erroneous where it restricted a physician’s medical license for administering estrogen injections in higher dosages and at greater frequencies than permitted by the standard of health care in Boise. *Haw v. Idaho State Bd. of Med.*, 140 Idaho 152, 90 P.3d 902 (2004).

DECISIONS UNDER PRIOR LAW

Moral Turpitude.

Under a statute making the conviction of a physician of a felony, in a state or federal court, or conviction of a physician of any crime involving moral turpitude, ground for revocation or suspension of his license, his conviction in a federal court of cheating and de-

frauding the government through fraudulent claims, while employed by the government to treat disabled veterans, involved such moral turpitude as to justify revocation of his license as a physician, and not a mere suspension thereof. *Craft v. Balderston*, 58 Idaho 650, 78 P.2d 122 (1938).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 71 et seq.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 52 et seq.

A.L.R. — Professional incompetency as ground for disciplinary measure against physician or dentist. 28 A.L.R.3d 487.

Name or picture of physician, unauthorized use of, on patent medicine. 57 A.L.R.3d 16.

Pardon as restoring public office or license or eligibility therefor. 58 A.L.R.3d 1191.

Physician’s or other healer’s conduct, or

conviction of offense, not directly related to medical practice, as ground for disciplinary action. 34 A.L.R.4th 609.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician’s or dentist’s license to practice. 19 A.L.R.6th 577.

54-1815. Violation of act — Injunction. — Whenever any person is found violating any of the provisions of this chapter, the department or the board, without regard to criminal prosecution, may maintain an action in the name of the state of Idaho to enjoin said person from doing any of the acts above described, said action to be brought in the county in which said acts are claimed to have been or are being committed; and upon the filing of a verified petition in the district court of the county where said acts have been or are being committed, the court, or a judge thereof at chambers, if satisfied by affidavit or otherwise that the acts complained of have been or are being committed, shall issue a temporary injunction, without bond, as a matter of course, enjoining the defendant from the commission of any such act or acts. A copy of said verified complaint shall be served upon the defendant, and the proceedings shall thereafter be conducted as in other

civil cases. If the commission of said act or acts be established, the court, or a judge thereof at chambers, shall enter a decree perpetually enjoining said defendant from committing said act or acts. In case of violation of any injunction issued under the provisions of this section, the court, or a judge thereof, at chambers, may summarily try and punish the offender for his contempt of court.

History.

1949, ch. 23, § 15, p. 27.

STATUTORY NOTES

Compiler's Notes.

Sections 16 to 18 of S.L. 1949, ch. 23, provide as follows:

"Section 16. Severability. — If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

"Section 17. Repeals. — Section 53-2101, section 53-2102, section 53-2103, section 53-2104, section 53-2105, section 53-2106, section 53-2107, section 53-2108, section 53-2109, section 53-2110, section 53-2111, section

53-2112, section 53-2113, section 53-2114, section 53-2115, and section 53-2116 [§§ 54-1801 — 54-1816] should be, and the same are hereby repealed. No other provision of law shall be deemed repealed by this act unless plainly and fundamentally in conflict herewith; provided, however, that the provisions of title 65, chapter 28 [tit. 67, ch. 29], which authorize appointment of a board for each profession or occupation shall have no application to the profession of medicine and surgery as defined in this act.

"Section 18. Effective Date. — This act shall be effective on and after July 1, 1949; provided, however, that the fee for renewal of a license to practice medicine and surgery for the year beginning July 1, 1949, shall be the fee prescribed in section 54-1804."

JUDICIAL DECISIONS

Cited in: State ex rel. State Bd. of Medicine v. Smith, 81 Idaho 103, 337 P.2d 938 (1959).

54-1816. Exemption of persons practicing upon hospital patients when under supervision. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1957, ch.

173, § 1, p. 312; am. 1974, ch. 13, § 147, p. 138 was repealed by S.L. 1977, ch. 199, § 1.

54-1817. Post mortem examinations. — Consent for a person licensed to practice medicine and surgery in the state of Idaho, to conduct a post mortem examination of the body of the deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for the purposes of burial: father, mother, husband, wife, child, guardian, next of kin, or in the absence of any of the foregoing, a friend, or a person charged by law with the responsibility for burial. If two (2) or more such persons assume custody of the body, the consent of one (1) of them shall be deemed sufficient.

History.

1963, ch. 155, § 1, p. 457.

STATUTORY NOTES**Cross References.**

Disposition of remains of deceased person,
§ 54-1142.

54-1818. Reporting of violations by physicians. — A licensed physician and surgeon possessing knowledge of a violation of section 54-1814, Idaho Code, by any other physician and surgeon licensed to practice medicine in Idaho shall with reasonable promptness report such knowledge to the board of medicine or its duly authorized committee, agency or representative, and failure to do so shall subject such person to disciplinary action by the state board of medicine as in its discretion the board shall deem proper, pursuant to procedures provided in chapter 18, title 54, Idaho Code; provided, no person shall be civilly liable for communications, reports or acts of any kind made, given or handled under the provisions of this act. However, notwithstanding the foregoing, no physician or surgeon shall be required to report, nor shall any physician or surgeon report, any information known, learned or discovered by that physician or surgeon as a result of participation in peer review or access to peer review records, as defined in section 39-1392a, Idaho Code. This provision shall not relieve a health care organization of its notification obligations as set forth in section 39-1393, Idaho Code.

History.

1976, ch. 192, § 1, p. 709; am. 2003, ch. 244,
§ 7, p. 628.

STATUTORY NOTES**Compiler's Notes.**

The term "this act", at the end of the first

sentence, was added by S.L. 1976, chapter 192, which is codified as this section.

JUDICIAL DECISIONS**Duty to Report.**

Although a doctor's alleged misconduct of performing unnecessary procedures for financial gain might have been unlawful and in violation of public policy, the discharged doctor was not under a duty to report it to the Idaho board of medicine under § 54-1810 and this section; thus, "unclean hands" argument failed with regard to the doctor's claim for wrongful termination in violation of public policy. *Thomas v. Med. Ctr. Physicians, P.A.*, 138 Idaho 200, 61 P.3d 557 (2002).

In a physician's suit against medical center for wrongful termination and retaliatory discharge, the appellate court held that this section required licensed physicians to report the conduct of other licensed physicians that violated the provisions of § 54-1814, and the physician's failure to report the allegations of another physician's misconduct to the Idaho board of medicine did not constitute a defense for the medical center. *Thomas v. Med. Ctr. Physicians, P.A.*, 138 Idaho 200, 61 P.3d 557 (2002).

54-1819. Definition and procedure for determination of death. —
(1) An individual who has sustained either (a) irreversible cessation of

circulatory and respiratory functions, or (b) irreversible cessation of all functions of the entire brain, including the brain stem, is dead.

(2) A determination of death must be made in accordance with accepted medical standards which mean the usual and customary procedures of the community in which the determination of death is made.

History.

I.C., § 54-1819, as added by 1981, ch. 258,
§ 2, p. 549.

STATUTORY NOTES

Prior Laws.

Former § 54-1819, which comprised 1977, ch. 130, § 1, p. 276, was repealed by S.L. 1981, ch. 258, § 1.

JUDICIAL DECISIONS

Determination of Death.

Where the only evidence which contrasted with a doctor's medical opinion that hospital's attempt to revive an indigent cardiac arrest patient was necessary and reasonable, was testimony from patient's husband who believed that his wife had died on their lawn while being attended by the paramedics, such

lay testimony was insufficient to supplant the expert opinion of the doctor as to whether there was a reasonable prospect that the cessation of patient's life functions could be reversed when she arrived at the hospital. *Jefferson County v. Eastern Idaho Regional Medical Ctr.*, 126 Idaho 392, 883 P.2d 1084 (Ct. App. 1994).

54-1820. Access to records. — All papers, records, correspondence, communications and proceedings of the Idaho state board of medicine shall be open and public except as otherwise provided in chapter 3, title 9, Idaho Code.

History.

I.C., § 54-1820, as added by 1985, ch. 233,
§ 1, p. 553; am. 1990, ch. 213, § 78, p. 480.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1985, ch. 233 declared an emergency. Approved March 21, 1985.

54-1821. No physician-patient relationship for informal consultations. — (1) No physician-patient relationship is created between a physician licensed under this chapter and an individual not otherwise a patient of that physician when a physician is contacted by another physician or licensed health care practitioner who is treating the patient for a consultation or advice, if:

- (a) The consulted physician does not examine the patient; and
- (b) Such consultation or advice is given by the physician to the physician or health care practitioner treating the patient without expectation of compensation for providing such consultation or advice.

(2) A consulted physician who does not have a physician-patient relationship with a patient by virtue of this section shall not be named on any

special verdict form concerning care provided to the patient unless there is a basis of liability to the patient independent of the consultation.

History.

I.C., § 54-1821, as added by 2010, ch. 353,
§ 1, p. 929.

54-1822 — 54-1830. [Reserved.]

DISABLED PHYSICIAN ACT

54-1831. Short title. — This act shall be known as the “Disabled Physician Act.”

History.

1976, ch. 290, § 1, p. 1000.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1976, ch. 290, which is compiled as §§ 54-1831 to 54-1838 and 54-1840.

54-1832. Grounds for restriction, suspension, or revocation of license. — The license of any physician to practice medicine in this state shall be subject to restriction, suspension, or revocation, as hereinafter provided, in case of inability of the licensee to practice medicine with reasonable skill or safety to patients by reason of one or more of the following:

- (a) mental illness;
- (b) physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill; or
- (c) excessive use or abuse of drugs, including alcohol.

History.

1976, ch. 290, § 2, p. 1000.

STATUTORY NOTES

Cross References.

Acting as physician while intoxicated as a crime, § 18-4202.

“Mentally ill” defined, § 66-317.

RESEARCH REFERENCES

A.L.R. — Admissibility of physician’s testimony as to patient’s statements or declarations, other than res gestae, during medical examinations. 37 A.L.R.3d 778.

54-1833. Duties of board of medicine. — (a) If the board of medicine (“board”) has reasonable cause to believe that a physician licensed to practice medicine in this state is unable to practice medicine with reasonable skill and safety to patients because of a condition described in section 54-1832, [Idaho Code,] such board shall cause an examination of such

physician to be made and shall, following such examination, take appropriate action within the provisions of this act.

(b) Examination of a physician under this section shall be conducted by an examining committee which the board shall designate and which shall be composed of three (3) licensed, practicing physicians including at least one (1) psychiatrist if a question of mental illness is involved in the particular examination of the particular physician in any given case.

History.

1976, ch. 290, § 3, p. 1000.

STATUTORY NOTES

Compiler's Notes.

The word in parentheses so appeared in the law as enacted.

The term "this act," in subsection (a), refers to S.L. 1976, ch. 290, which is compiled as §§ 54-1831 to 54-1838 and 54-1840.

54-1834. Examination by committee. — (a) The examining committee assigned to examine a physician pursuant to referral by the board under section 54-1833[, Idaho Code,] shall conduct an examination of such physician for the purpose of determining the physician's fitness to practice medicine with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The committee shall order the physician to appear before the committee for hearing and give him ten (10) days' notice of time and place of the hearing, together with a statement of the cause for such examination. Such notice shall be served upon the physician either personally or by registered or certified mail with return receipt requested.

(b) If the examining committee, in its discretion, should deem a mental or physical examination of the physician necessary to its determination of the fitness of the physician to practice, the committee shall order the physician to submit to such examination. Any person licensed to practice medicine in this state shall, by so practicing or by making or filing of annual registration to practice medicine in this state, be deemed to have given his consent to submit to mental or physical examination when so directed by the examining committee and, further, to have waived all objections to the admissibility of the examining committee's report to the board on the grounds of privileged communication. Any physician ordered to a hearing before the committee under subsection (a) of this section shall be entitled to a mental or physical examination by that committee if he makes request therefor.

(c) Any physician who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate another physician to be present at the examination and make an independent report to the board.

(d) Failure of a physician to comply with a committee order under subsection (b) of this section to appear before it for hearing or to submit to mental or physical examination under this section shall be reported by the committee to the board, and, unless due to circumstances beyond the control of the physician, shall be grounds for suspension by the board of the

physician's license to practice medicine in this state until such time as such physician has complied with the order of the committee.

History.

1976, ch. 290, § 4, p. 1000.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection (a) was added by the compiler to conform to the statutory citation style.

RESEARCH REFERENCES

A.L.R. — Right of party to have his attorney or physician, or a court reporter, present during his physical or mental examination by a court-appointed expert. 7 A.L.R.3d 881. Right of party to have attorney or physician present during physical or mental examination at instance of opposing party. 84 A.L.R.4th 558.

54-1835. Voluntary restriction of licensure. — A physician may request in writing to the board a restriction of his license to practice medicine. The board may grant such request for restriction and shall have authority, if it deems appropriate, to attach conditions to the licensure of the physician to practice medicine within specified limitations, and waive the commencement of any proceeding under section 54-1837[, Idaho Code]. Removal of a voluntary restriction on licensure to practice medicine shall be subject to the procedure for reinstatement of license in section 54-1838[, Idaho Code].

History.

1976, ch. 290, § 5, p. 1000.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions in the second and third sentences were added by the compiler to conform to the statutory citation style.

54-1836. Report to the board — Action. — (a) The examining committee shall report to the board its findings on the examination of the physician under section 54-1834[, Idaho Code], the determination of the committee as to the fitness of the physician to engage in the practice of medicine with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Such recommendation by the committee shall be advisory only and shall not be binding on the board.

(b) The board may accept or reject the recommendation of the examining committee to permit a physician to continue to practice with or without any restriction on his license to practice medicine, or may refer the matter back to the examining committee for further examination and report thereon.

(c) In the absence of a voluntary agreement by a physician under section 54-1835[, Idaho Code,] for restriction of the licensure of such physician to practice medicine, any physician shall be entitled to a hearing in formal proceedings before the board and a determination on the evidence as to

whether or not restriction, suspension, or revocation of licensure shall be imposed.

History.

1976, ch. 290, § 6, p. 1000.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions in subsections (a)

and (c) were added by the compiler to conform to the statutory citation style.

54-1837. Proceedings. — (a) The board may proceed against a physician under this act by serving upon such physician at least fifteen (15) days' notice of a time and place fixed for a hearing, together with copies of the examining committee's report and diagnosis. Such notice and reports shall be served upon the physician either personally or by registered or certified mail with return receipt requested.

(b) At said hearing the physician shall have the right to be present, to be represented by counsel, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board.

(c) At the conclusion of the hearing, the board shall make a determination of the merits and, if grounds therefor are found to exist, may issue an order imposing one or more of the following:

(1) Make a recommendation that the physician submit to the care, counseling, or treatment by physicians acceptable to the board; or

(2) Suspend or restrict the license of the physician to practice medicine for the duration of his impairment; or

(3) Revoke the license of the physician to practice medicine; and

if grounds are not found to exist, the board shall enter its order so stating, shall dismiss the proceedings and shall provide the respondent a true copy thereof.

(d) The board may temporarily suspend or restrict the license of any physician or enter an appropriate order of temporary probation, ex parte, on its own motion or on petition of the examining committee, pending further or final order without prior hearing, simultaneously with or at any time after the institution of proceedings for a hearing under this section, but only if it first finds, on the basis of a responsible showing which satisfactorily demonstrates that the physician, in his capacity as such and for reasons set forth by petition, affidavit, or other verified showing, is causing great harm to the public, or to any patient or group of patients, or is likely to cause such harm and therefore should be immediately suspended, restricted or specially controlled in or from the practice of medicine.

(1) In such cases, the board may summarily, and ex parte, order temporary conditions of probation, suspension or restriction of said physician and his or her license and authority to practice medicine in the state of Idaho, pending further or final order in the proceedings.

(2) In cases of extreme emergency the board may enter said temporary order under this section without prior referral to or recommendation from the examining committee.

(3) In cases in which the examining committee first determines that such temporary suspension, restriction or probation of such physician is necessary and in the public interest pending the final conclusion of proceedings or further order, it shall so recommend to the board, and the board, if it finds that the evidence in support of such determination and recommendation is clear and convincing and that the physician's continuation in the practice would constitute an imminent danger to public health and safety or pose a threat or menace of the kind hereinabove specified, may, in its discretion, enter an order in keeping with the recommendation of the examining committee or provide such modifications, conditions or orders as it deems appropriate.

(4) The physician may, for good cause, request dissolution or amendment of any such temporary order by petition filed with the board, which petition shall be set for prompt hearing before the board or, if necessary and on request of the physician in the interest of early consideration, before a hearing officer or special committee designated by the board for that purpose, which officer or committee shall forthwith hear said matter and report to the board its report and recommendation. The board, consistent with due process, shall rule with the least amount of delay reasonably possible.

(e) Neither the record of the proceeding nor any order entered against a physician may be used against him in any other legal proceeding except upon judicial review as provided herein, it being the intent and purpose of this act that all evidence, testimony, showings and proceedings are subject to disclosure according to chapter 3, title 9, Idaho Code, but not to be used in criminal or civil proceedings concerning the subject physician.

History.

1976, ch. 290, § 7, p. 1000; am. 1990, ch. 213, § 79, p. 480.

STATUTORY NOTES

Compiler's Notes.

The term "this act," in subsections (a) and (e), refers to S.L. 1976, ch. 290, which is compiled as §§ 54-1831 to 54-1838 and 54-1840.

amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as

54-1838. Reinstatement of license. — (a) A physician whose license has been restricted, suspended or revoked under this act, voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement of his license and to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients. Such petition shall be made in writing and on a form prescribed by the board. Action of the board on such petition shall be initiated by referral to and examination by the examining committee pursuant to the provisions of sections 54-1834 and 54-1835[, Idaho Code]. The board may, upon written recommendation of the examining committee, restore the licensure of the

physician on a general or limited basis or institute a proceeding pursuant to this section for the determination of the fitness of the physician to resume his practice.

History.

1976, ch. 290, § 8, p. 1000.

STATUTORY NOTES**Compiler's Notes.**

The designation subsection "(a)" at the beginning of this section is surplusage as there is no subsection (b).

The term "this act," near the beginning of the section, refers to S.L. 1976, ch. 290, which

is compiled as §§ 54-1831 to 54-1838 and 54-1840.

The bracketed insertion at the end of the third sentence was added by the compiler to conform to the statutory citation style.

54-1839. Judicial review. — All final decisions by the board of medicine shall be subject to judicial review pursuant to the procedures of the administrative procedures act, chapter 52, title 67, Idaho Code.

History.

I.C., § 54-1839, as added by 1982, ch. 323, § 3, p. 798.

STATUTORY NOTES**Prior Laws.**

Former § 54-1839 which comprised (1976, ch. 290, § 9, p. 1000) was repealed by S.L. 1982, ch. 323, § 2.

54-1840. Protected action and communication. — There shall be no liability on the part of and no action for damages against:

(a) Any member of the examining committee or the board for any action undertaken or performed by such member within the scope of the functions of such committee or the board under this act when acting without malice and in the reasonable belief that the action taken by him is warranted; or

(b) Any person providing information to the committee or to the board without malice in the reasonable belief that such information is accurate.

History.

1976, ch. 290, § 10, p. 1000.

STATUTORY NOTES**Compiler's Notes.**

The term "this act," in subsection (a), refers to S.L. 1976, ch. 290, which is compiled as §§ 54-1831 to 54-1838 and 54-1840.

54-1841. Volunteer's license — Qualifications. — (1) Upon application and qualification, the board may issue, without examination, a volunteer's license to a physician who is retired from the active practice of medicine and surgery or osteopathic medicine and surgery to enable the retired physician to provide medical services to persons who, due to age, infirmity, indigence or disability, are unable to receive regular medical treatment.

(2)(a) For purposes of this section, a physician previously holding a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathic medicine with active status in Idaho or another state shall be considered to be retired if, prior to the date of application for a volunteer's license:

(i) He has surrendered or allowed his license with active status to expire with the intention of ceasing to actively practice as a physician for remuneration;

(ii) He has converted his license with active status to a license with inactive status with the intention of ceasing to actively practice as a physician for remuneration; or

(iii) He has converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice of medicine and surgery or osteopathic medicine and surgery.

(b) A physician whose license had been restricted, suspended, revoked, surrendered, resigned, converted, or allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action being taken shall not be eligible for a volunteer's license.

(3) An application for a volunteer's license shall include, but not be limited to, the following:

(a) Verification of graduation from an acceptable school of medicine or an acceptable osteopathic school of medicine;

(b) Verification from each state board in which the applicant was licensed that the applicant maintained his license in good standing without disciplinary action that restricted the applicant's license or resulted in the applicant's license being placed on probation, suspended, revoked or being surrendered, resigned or otherwise allowed to lapse or expire in lieu of disciplinary action;

(c) Verification that the applicant held a license in good standing in Idaho or another state as of the date upon which the physician became retired;

(d) Verification that the applicant held an active status license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer's license, provided, that the board may waive the five (5) year requirement in the event that the applicant demonstrates that he possesses the knowledge and skills requisite to the practice of medicine and surgery or osteopathic medicine and surgery by successfully completing such examinations as are required by the board; and

(e) A notarized statement from the applicant on a form prescribed by the board, that the applicant will not provide any physician services to any person other than those permitted by the license and that the applicant will not accept any amount or form of remuneration, other than as reimbursement for the amount of actual expenses incurred as a volunteer physician, for any physician services provided under the authority of a volunteer's license.

(4) A volunteer's license shall be valid for that period specified for physicians in section 54-1808, Idaho Code, and may be renewed upon application of the licensee unless the license has been revoked in accordance with this section. The board shall maintain a register of all physicians who

hold a volunteer's license. The board shall not charge an application or licensing fee for issuing or renewing a volunteer's license. A volunteer's license cannot be converted to a license with active, inactive or temporary status.

(5) The board may revoke a volunteer's license upon receiving proof satisfactory to the board that grounds existed for enforcement or disciplinary action against the holder of a volunteer's license under other sections of this chapter or the administrative rules promulgated under this chapter.

History.

I.C., § 54-1841, as added by 2005, ch. 45, § 1, p. 173; am. 2010, ch. 235, § 39, p. 542.

STATUTORY NOTES

Prior Laws.

Former § 54-1841, which comprised of 1976, ch. 290, § 11, p. 1000, was repealed by S.L. 2000, ch. 332, § 5, effective July 1, 2000.

Amendments.

The 2010 amendment, by ch. 235, deleted "handicap" following "infirmary" near the end in subsection (1).

CHAPTER 19

PUBLIC WORKS CONTRACTORS

SECTION.

- 54-1901. Legislative intent — Definitions.
- 54-1902. Unlawful to engage in public works contracting without license — Investigations.
- 54-1903. Exemptions.
- 54-1904. Classes of licenses — Rights granted under licenses — Fees.
- 54-1904A. Filing of notices and income tax returns — Payment of income taxes by contractors.
- 54-1904B. Relief from bids.
- 54-1904C. Grounds for relief.
- 54-1904D. Prohibition against further bidding.
- 54-1904E. Award of contract to second or next lowest bidder.
- 54-1905. Public works contractors license board created — Qualifications of appointees — Term — Removals.
- 54-1906. Principal place of business. [Repealed.]
- 54-1907. Duties and powers of the board — Seal.
- 54-1908. Meetings — Quorum.
- 54-1909. Reports. [Repealed.]
- 54-1910. Examinations, qualifications and applications.
- 54-1911. Filing, issuance and denial of licenses — Fees not refunded.
- 54-1912. Expiration and renewal of licenses — Fees.
- 54-1913. Records, lists and information.

SECTION.

- 54-1914. Administrative enforcement proceedings.
- 54-1914A. Impaired financial responsibility — Notification — Hearing — Licensee's statement. [Repealed.]
- 54-1915. Procedure for imposition of discipline.
- 54-1916. Judicial review — Appeals procedure.
- 54-1917. Renewal of suspended or revoked license.
- 54-1918. Subpoenas and process.
- 54-1919. Revocation by court.
- 54-1920. Penalties — Injunction.
- 54-1920A. Enforcement.
- 54-1921. Public works contractors license fund — Appropriation.
- 54-1922. Act superior to all laws in conflict.
- 54-1923. Title.
- 54-1924. Separability.
- 54-1925. Public Contracts Bond Act — Short title.
- 54-1926. Performance and payment bonds required of contractors for public buildings and public works of the state, political subdivisions and other public instrumentalities — Requirements for bonds — Governmental obligations.
- 54-1926A. Use of government obligations instead of surety bonds.
- 54-1927. Claims for labor or material furnished or equipment supplied

SECTION.

— Suit on contractor's payment bond — Procedure — Limitation.

54-1928. Liability of public body for failure to obtain payment bond.

SECTION.

54-1929. Attorney's fees allowed.

54-1930. Meaning of terms used in act.

54-1901. Legislative intent — Definitions. — (1) The legislature finds that it is in the best interests of the people of the state of Idaho to establish a process for licensure of public works contractors to be administered through the public works contractors license board. To assure that experienced and qualified contractors provide services to public entities in Idaho, the board is charged with licensing as provided in this chapter. Effective licensing procedures should assure that contractors of integrity provide work for which they have specific experience and expertise and that public facilities are constructed and rebuilt by efficient and cost-effective means. Licensing should also protect the public health and safety through judicious exercise of investigative, disciplinary and enforcement activities.

(2) For the interpretation of this chapter, unless the context indicates a different meaning:

(a) "Person" includes any individual, firm, copartnership, corporation, limited liability company, limited liability partnership, association or other organization, or any combination thereof acting as a unit.

(b) "Public works contractor," which term is synonymous with the term "builder," "subcontractor" and "specialty contractor," and in this chapter referred to as "contractor" or "licensee," includes any person who, in any capacity, undertakes, or offers to undertake, or purports to have the capacity to undertake any construction, repair or reconstruction of any public work, or submits a proposal to, or enters into a contract with, the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or with any agency, or with any other public board, body, commission, department or agency, or officer or representative thereof, authorized to let or award contracts for the construction, repair or reconstruction of any public work.

(c) "Public works construction" includes any or all of the following branches:

(i) Heavy construction, which is defined as constructing substantially in its entirety any fixed works and structures (not including "building construction"), without limitation, for any or all of the following divisions of subjects: irrigation, drainage, sanitation, sewage, water power, water supply, reservoirs, flood control, reclamation, inland waterways, railroads, grade separations, track elevation, elevated highways, hydroelectric developments, aqueducts, transmission lines, duct lines, pipelines, locks, dams, dikes, levees, revetments, channels, channel cutoffs, intakes, drainage, excavation and disposal of earth and rocks, foundations, piers, abutments, retaining walls, viaducts, shafts, tunnels, airports, air bases and airways, and other facilities incidental to the same;

(ii) Highway construction, which is defined as all work included in

highway construction contracts, including, without limitation, highways, roads, streets, bridges, tunnels, sewer and street grading, street paving, curb setting, surfacing and other facilities incidental to any of the same;

(iii) Building construction, which is defined as all work in connection with any structure now built, being built, or hereafter built, for the support, shelter and enclosure of persons, chattels, personal and movable property of any kind, requiring in its construction the use of more than two (2) unrelated building trades or crafts.

(iv) Specialty construction, which is defined as any work in connection with any public works construction, requiring special skill and the use of specially skilled trades or crafts.

(d) "Board" means the board created by this chapter under the name of "public works contractors license board."

(e) "Administrator" means the administrator of the division of building safety.

(f) "Year" means the fiscal year ending June 30, each year.

(g) "Federal aid funds" means a direct grant in aid, matching funds, or loan from an agency of the federal government and designated for a specific public works project. Revenue sharing funds, federal impact funds, timber stumpage fees, and similar indirect allowances and subsidies not designated for a specific public works project shall not be regarded as "federal aid funds" within the meaning of this section.

(h) "Government obligation" means a public debt obligation of the United States government or the state of Idaho and an obligation whose principal and interest is unconditionally guaranteed by the United States government or the state of Idaho.

(i) "Public entity" means the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof.

(j) "Bid" or "bidder" means any proposal submitted by a public works contractor to a public entity in competitive bidding for the construction, alteration, repair or improvement of any public works construction.

History.

1941, ch. 115, § 1, p. 212; am. 1955, ch. 223, § 1, p. 480; am. 1982, ch. 140, § 1, p. 395; am. 1982, ch. 147, § 1, p. 409; am. 1986, ch. 67,

§ 1, p. 189; am. 1991, ch. 282, § 1, p. 726; am. 1999, ch. 201, § 1, p. 529; am. 2001, ch. 300, § 1, p. 1085; am. 2005, ch. 213, § 24, p. 637.

STATUTORY NOTES

Cross References.

Administrator of division of building safety, § 67-2601A.

Penalty for violations of act, § 54-1920.

Public works contractors license board, § 54-1905.

Compiler's Notes.

The words in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1982, ch. 140 declared an emergency. Approved March 22, 1982.

Section 4 of S.L. 1982, ch. 147 declared an emergency. Approved March 23, 1982.

JUDICIAL DECISIONS

ANALYSIS

In general.
Necessity of license.

In General.

This chapter requires a subcontractor not only to be licensed for a general classification of work, but also to hold a specific license from the state based upon type, scope and responsibility of operation. *Neilson & Co. v. Cassia & Twin Falls County Joint Class A Sch. Dist.* 151, 96 Idaho 763, 536 P.2d 1113 (1975).

Necessity of License.

A construction company was not eligible to bid on or receive a county's sanitary landfill contract where the company did not have a public works contractors license. *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978).

RESEARCH REFERENCES

Am. Jur. — 13 Am. Jur. 2d, Building and Construction Contracts, § 129 et seq.

A.L.R. — Who is a "contractor" within statutes requiring the licensing of, or imposing a license tax upon, a "contractor" without specifying the kinds of contractors involved. 19 A.L.R.3d 1407.

Failure to procure business or occupational license as affecting enforceability of contract or right of recovery for work done. 44 A.L.R.4th 271.

54-1902. Unlawful to engage in public works contracting without license — Investigations. — (1) It shall be unlawful for any person to engage in the business or act in the capacity of a public works contractor within this state without first obtaining and having a license issued pursuant to the provisions of this chapter by the administrator of the division of building*safety, unless such person is particularly exempted as provided in this chapter.

(2) It shall be unlawful for any public works contractor to subcontract in excess of eighty percent (80%) of the work under any contract to be performed by him as such public works contractor according to the contract prices therein set forth, unless otherwise provided in the specifications of such contracts.

(3) Except as provided in subsection (4) of this section, it shall be unlawful for any public works contractor to:

- (a) Accept a bid from any person who at that time does not possess the appropriate license for the project involved; or
- (b) Accept bids to sublet any part of any contract for specialty construction from a specialty contractor who at that time does not possess the appropriate license in accordance with this chapter.

(4) No contractor shall be required to have a license under this chapter in order to submit a bid or proposal for contracts for public works financed in whole or in part by federal aid funds, provided that, at or prior to the award and execution of any such contract by the state of Idaho or any other contracting authority mentioned in this chapter, the successful bidder has secured a license as provided in this chapter.

(5) The administrator may, upon his own motion or at the direction of the

board, and shall, upon the verified written complaint of any person, investigate allegations of unlicensed practice of public works contracting.

History.

1941, ch. 115, § 2, p. 212; am. 1955, ch. 223, § 2, p. 480; am. 1982, ch. 147, § 2, p. 409; am.

1999, ch. 201, § 2, p. 529; am. 2001, ch. 300, § 2, p. 1085; am. 2002, ch. 127, § 1, p. 355.

JUDICIAL DECISIONS

ANALYSIS

Application.

Enforcement by third party.

Application.

A construction company was not eligible to bid on or receive a county's sanitary landfill contract where the company did not have a public works contractors license. *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978).

performance without a public works contractors license, and the lowest responsible bidder should be awarded reasonable attorney fees for the original proceedings in the trial court and on appeal. *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978).

Enforcement by Third Party.

Even if a county's contract with a construction company is not absolutely void as between the parties to it, the lowest responsible bidder may nevertheless be entitled to injunctive relief against the company's continued

Cited in: *Neilson & Co. v. Cassia & Twin Falls County Joint Class A Sch. Dist.* 151, 96 Idaho 763, 536 P.2d 1113 (1975); *Harris, Inc. v. Foxhollow Constr. & Trucking*, 151 Idaho 761, 264 P.3d 400 (2011).

RESEARCH REFERENCES

A.L.R. — Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforce-

ability of contract or right of recovery for work done — Modern cases. 44 A.L.R.4th 271.

54-1903. Exemptions. — This chapter shall not apply to:

(a) An authorized representative of the United States government, the state of Idaho, or any incorporated town, city, county, irrigation district, reclamation district or other municipal or political corporation or subdivision of this state.

(b) Officers of a court when they are acting within the scope of their office.

(c) Public utilities operating under the jurisdiction of the public utilities commission of the state of Idaho on construction, maintenance and development work incidental to their own business.

(d) The sale or installation of any finished products, materials or articles of merchandise, which are not actually fabricated into and do not become a permanent fixed part of the structure.

(e) Any construction, alteration, improvement or repair of personal property.

(f) Any construction, alteration, improvement or repair carried on within the limits and boundaries of any site or reservation, the title of which rests in the federal government.

(g) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, drainage districts or reclamation districts, except when performed by a person required to be licensed under this chapter.

(h) Duly licensed architects, licensed engineers, and land surveyors when acting solely in their professional capacity.

(i) Any construction, alteration, improvement or repair involving any single project involving any number of trades or crafts with an estimated cost of less than ten thousand dollars (\$10,000), or a project estimated to cost less than fifty thousand dollars (\$50,000) for which no responsive statement of interest was received from a licensed public works contractor when statements of interest were solicited as provided in section 67-2805, Idaho Code.

(j) Any construction, operation, alteration or maintenance of a solid waste disposal site including those operated by, for, or at the direction of a city or a county.

(k) Any construction, operation or repair carried on in response to an emergency that has been officially declared by the governor pursuant to the provisions of chapter 10, title 46, Idaho Code, or an emergency that has been declared by a governing body (city or county) in anticipation of a governor’s declaration, for a period of time not to exceed seven (7) calendar days.

History.

1941, ch. 115, § 3, p. 212; am. 1961, ch. 216, § 1, p. 345; am. 1979, ch. 109, § 4, p. 345; am. 1980, ch. 116, § 1, p. 254; am. 1987, ch. 71,

§ 1, p. 140; am. 1997, ch. 170, § 1, p. 484; am. 1999, ch. 201, § 3, p. 529; am. 2000, ch. 376, § 1, p. 1236; am. 2005, ch. 213, § 25, p. 637.

STATUTORY NOTES

Cross References.

Public utilities commission, § 62-201 et seq.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 5 of S.L. 1979, ch. 109 declared an emergency. Approved March 22, 1979.

Section 2 of S.L. 1987, ch. 71 declared an emergency. Approved March 24, 1987.

Section 2 of S.L. 1997, ch 170 declared an emergency. Approved March 19, 1997.

54-1904. Classes of licenses — Rights granted under licenses —

Fees. — (1) There shall be eight (8) classes of licenses issued under the provisions of this chapter which are hereby designated as Classes Unlimited, AAA, AA, A, B, CC, C and D, the maximum fee for which shall be as hereinafter specified. Each applicant for a license shall specify the class of license applied for in his application.

(2) For the purpose of licensing public works contractors under this chapter the board may adopt rules necessary to determine the classification according to their responsibility, and the type and scope of the operations of a licensed contractor to those in which he is classified and qualified to engage as in this chapter provided.

(3) The license classes shall be as follows:

(a) Class “Unlimited” license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of more than five million dollars (\$5,000,000) may, upon application and payment of a license fee not to exceed six hundred dollars (\$600), be granted a Class “Unlimited” license and be so classified by the board in accordance with the provisions of this chapter. The holder of a

Class "Unlimited" license shall be entitled to engage in the public works contracting business in this state as provided in said license. The renewal fee for a Class "Unlimited" license shall not exceed six hundred dollars (\$600). An applicant requesting a Class "Unlimited" license in heavy, highway, specialty or building construction shall have a minimum net worth of one million dollars (\$1,000,000) with six hundred thousand dollars (\$600,000) in working capital.

(b) Class "AAA" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than five million dollars (\$5,000,000) may, upon his application and the payment of a license fee not to exceed five hundred dollars (\$500), be granted a Class "AAA" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "AAA" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "AAA" license shall not exceed five hundred dollars (\$500).

(c) Class "AA" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than three million dollars (\$3,000,000) may, upon his application and the payment of a license fee not to exceed four hundred dollars (\$400), be granted a Class "AA" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "AA" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "AA" license shall not exceed four hundred dollars (\$400).

(d) Class "A" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than one million two hundred fifty thousand dollars (\$1,250,000) may, upon his application and the payment of a license fee not to exceed three hundred dollars (\$300), be granted a Class "A" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "A" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "A" license shall not exceed three hundred dollars (\$300).

(e) Class "B" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than six hundred thousand dollars (\$600,000), may, upon his application and the payment of a license fee not to exceed two hundred dollars (\$200) be granted a Class "B" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "B" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "B" license shall not exceed two hundred dollars (\$200).

(f) Class "CC" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than four hundred thousand dollars (\$400,000), may, upon his application and the payment of a license fee not to exceed one

hundred fifty dollars (\$150), be granted a Class “CC” license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class “CC” license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class “CC” license shall not exceed one hundred fifty dollars (\$150).

(g) Class “C” license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than two hundred thousand dollars (\$200,000), may, upon his application and the payment of a license fee not to exceed one hundred dollars (\$100), be granted a Class “C” license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class “C” license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class “C” license shall not exceed one hundred dollars (\$100).

(h) Class “D” license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than fifty thousand dollars (\$50,000), may, upon his application and the payment of a license fee not to exceed fifty dollars (\$50.00), be granted a Class “D” license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class “D” license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class “D” license shall not exceed fifty dollars (\$50.00).

(4) The board shall be vested with the power to fix annually the amount of the original and renewal license fees for each class of license for the ensuing license year. The amount of the license fee so fixed shall not exceed the maximum fee set forth in this section.

(5) Each license issued by the administrator shall clearly indicate the type and scope of work for which the licensee is qualified and licensed. The holder of the license shall be permitted to submit proposals for and perform only those types of work specified in each license. The administrator may extend the permissible type or scope of work to be done under any license when it is determined by the administrator that the applicant meets all of the requirements of this chapter to qualify him to do such other work.

(6) The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except Class “Unlimited,” shall not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids shall include all bids of subcontractors. Subcontractor bids shall not be considered a separate bid for the purposes of computing the bid on a given public works project.

History.

1941, ch. 115, § 4, p. 212; am. 1955, ch. 223, § 3, p. 480; am. 1965, ch. 227, § 1, p. 535; am. 1969, ch. 18, § 1, p. 30; am. 1973, ch. 92, § 1, p. 159; am. 1985, ch. 137, § 1, p. 373; am.

1991, ch. 14, § 1, p. 30; am. 1996, ch. 332, § 1, p. 1126; am. 1999, ch. 201, § 4, p. 529; am. 2001, ch. 300, § 3, p. 1085; am. 2006, ch. 80, § 1, p. 242; am. 2008, ch. 254, § 1, p. 744; am. 2012, ch. 63, § 1, p. 165.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 80, changed the license fees throughout the section.

The 2008 amendment, by ch. 254, added the subsection designations; in subsection (1), substituted "seven (7) classes" for "six (6) classes," and inserted "Unlimited"; in subsection (3), added the introductory language and paragraph (3)(a); in paragraph (3)(b), substituted "cost of not more than five million dollars (\$5,000,000)" for "cost of more than three million dollars (\$3,000,000)"; in paragraph (3)(d), substituted "one million two hundred fifty thousand dollars (\$1,250,000)" for "one million dollars (\$1,000,000)"; in subsection (1)(e), substituted "six hundred thousand dollars (\$600,000)" for "five hundred thousand dollars (\$500,000)"; in paragraph

(1)(f), substituted "two hundred thousand dollars (\$200,000)" for "one hundred thousand dollars (\$100,000)"; and added subsection (6).

The 2012 amendment, by ch. 63, in subsection (1) substituted "eight (8) classes" for "seven (7) classes" and inserted "CC"; substituted "two hundred dollars (\$200)" for "one hundred fifty dollars (\$150)" twice in paragraph (3)(e); and added paragraph (3)(f), redesignating former paragraph (3)(f) as (3)(g).

Effective Dates.

Section 2 of S.L. 1973, ch. 92 declared an emergency and provided the act should take effect on and after April 1, 1973.

Section 2 of S.L. 1985, ch. 137 provided that the act should be in full force and effect on and after January 1, 1986.

JUDICIAL DECISIONS

Unqualified Subcontractor.

A contractor bidding on a new school building violated this section by listing a "AA" licensed subcontractor for plumbing and mechanical work when the cost involved re-

quired a "AAA" subcontractor for such work. *Neilson & Co. v. Cassia & Twin Falls County Joint Class A Sch. Dist.* 151, 96 Idaho 763, 536 P.2d 1113 (1975).

54-1904A. Filing of notices and income tax returns — Payment of income taxes by contractors. — Within thirty (30) days after any public works contractor who is required to be licensed pursuant to this chapter has been awarded a contract for construction to be performed within the state of Idaho involving the expenditure of any public moneys, the contract awarding agency shall notify the state tax commission that the contract has been awarded and shall provide to the state tax commission the name and address of the prime contractor. Upon written request of the state tax commission, the prime contractor, within thirty (30) days, shall file with the state tax commission a signed statement showing the date on which such contract was made or awarded, the names and addresses of the home offices of the contracting parties, including all subcontractors, the state of incorporation if the party is a corporation, the project number and a general description of the type and location of the work to be performed, the amount of the prime contract and all subcontracts, and all other relevant information which may be required on forms which may be prescribed by the state tax commission. The state tax commission shall forward to the administrator such information from the form as the administrator and the state tax commission agree is necessary for the administrator to fulfill the requirements of section 54-1913, Idaho Code. Every contractor or subcontractor whose name appears on any such notice shall be required to file income tax returns with the state tax commission and to pay all income taxes which may be due thereon pursuant to law for all years in which any public moneys were received by him in connection with any construction work which was performed within the state of Idaho.

History.

I.C., § 54-1904A, as added by 1963, ch. 292, § 1, p. 772; am. 1993, ch. 237, § 1, p. 819; am.

2005, ch. 213, § 26, p. 637; am. 2005, ch. 295, § 1, p. 935.

STATUTORY NOTES**Cross References.**

State tax commission, § 63-101 et seq.

Compiler's Notes.

Section 1 of S.L. 2005, ch. 295 amended this section as it read following its amendment by S.L. 2005, ch. 213 (House Bill 263), § 26.

Effective Dates.

Section 2 of S.L. 1963, ch. 292 declared an emergency. Approved March 27, 1963.

Section 7 of S.L. 1993, ch. 237 provided that the act shall be in full force and effect on January 1, 1994.

54-1904B. Relief from bids. — (a) If an awarding authority for the public entity determines that a bidder is entitled to relief from a bid because of a mistake, the authority shall prepare a report in writing to document the facts establishing the existence of each element required in section 54-1904C, Idaho Code. The report shall be available for inspection as a public record and shall be filed with the public entity soliciting bids.

(b) A bidder claiming a mistake satisfying all the conditions of section 54-1904C, Idaho Code, shall be entitled to relief from the bid and have any bid security returned by the public entity. Bidders not satisfying the conditions found in section 54-1904C, Idaho Code, shall forfeit any bid security. Bidders failing to execute a contract and not satisfying the conditions of a mistake shall also forfeit any bid security.

History.

I.C., § 54-1904B, as added by 1991, ch. 282, § 2, p. 726; am. 1999, ch. 201, § 5, p. 529.

JUDICIAL DECISIONS**Exhaustion of Remedies.**

Administrative remedies had not been exhausted where the state transportation department had not issued a final order regarding whether a bidder and its surety were entitled to the return of their bid bond after the bidder had discovered a mistake in its bid where the two documents in the record that could arguably have constituted a final order were the August 14, 2000 letter written by the

department's counsel and the September 14, 2000 letter entitled "Final Report" written by a roadway design engineer. Because neither of those persons was an "agency head" they could only issue either a recommended order or a preliminary order, neither letter was a recommended order that became final upon review by the agency head. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003).

54-1904C. Grounds for relief. — The bidder shall establish to the satisfaction of the public entity that:

- (a) A clerical or mathematical mistake was made;
- (b) The bidder gave the public entity written notice within five (5) calendar days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred; and
- (c) The mistake was material.

History.

I.C., § 54-1904C, as added by 1991, ch. 282, § 2, p. 726.

JUDICIAL DECISIONS

ANALYSIS

Contested case.
Exhaustion of remedies.
Forfeit.

Contested Case.

To be a contested case the decision by an agency as to whether a bidder is entitled to the return of its bid security must determine the legal rights, duties, privileges, immunities or other legal interests of specific persons, pursuant to § 67-5240, and whether or not that decision determines legal rights, duties, privileges, immunities or other legal interests requires a two-step analysis. First, has the legislature granted the agency the authority to determine the particular issue? If an agency does not have the authority to resolve a particular issue, then the agency cannot determine a party's legal rights, duties, privileges, immunities, or other legal interests regarding that issue. Second, does the agency decision on the issue determine the legal rights, duties, privileges, immunities, or other legal interests of one or more persons? Not all decisions of particular applicability by an agency determine a person's legal rights, duties, privileges, immunities, or other legal interests. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003).

Exhaustion of Remedies.

Administrative remedies had not been exhausted where the state transportation department had not issued a final order regarding whether a bidder and its surety were entitled to the return of their bid bond after the bidder had discovered a mistake in its bid where the two documents in the record that could arguably have constituted a final order were the August 14, 2000 letter written by the department's counsel and the September 14, 2000 letter entitled "Final Report" written by a roadway design engineer. Because neither of those persons was the "agency head" they could only issue either a recommended order or a preliminary order, neither letter was a recommended order that became final upon review by the agency head. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003).

Forfeit.

Bidder who claims a mistake, but fails to satisfy the conditions found in this section, forfeits any bid security. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003).

54-1904D. Prohibition against further bidding. — A bidder who claims a mistake or who forfeits their bid security shall be prohibited from participating in any rebidding of that project on which the mistake was claimed or security forfeited.

History.

I.C., § 54-1904D, as added by 1991, ch. 282, § 2, p. 726; am. 1999, ch. 201, § 6, p. 529.

JUDICIAL DECISIONS

Forfeit.

Bidder who claims a mistake, but fails to satisfy the conditions found in § 54-1904C,

forfeits any bid security. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003).

54-1904E. Award of contract to second or next lowest bidder. — If the public entity deems it is in its best interest, it may, on refusal or failure of the successful bidder to execute the contract, award it to the second lowest responsible bidder.

If the second lowest responsible bidder fails or refuses to execute the contract, the public entity may likewise award it to the next lowest responsible bidders.

On the failure or refusal of the second or next lowest responsible bidders

to execute a contract, their bidder's security shall be likewise forfeited. A public entity may determine it is in its best interests to cancel and rebid the public works project and retain any forfeited bid security.

History.

I.C., § 54-1904E, as added by 1991, ch. 282, § 2, p. 726; am. 1999, ch. 201, § 7, p. 529.

54-1905. Public works contractors license board created — Qualifications of appointees — Term — Removals. — There is hereby created and made part of the division of building safety in the department of self-governing agencies a public works contractors license board. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this chapter, and to serve as secretary to the board. The board shall be composed of seven (7) members, who shall be appointed by the governor. One (1) member of the board shall be a person whose primary business is that of a "heavy construction" contractor, one (1) member shall be a person whose primary business is that of a "highway construction" contractor, one (1) member shall be a person whose primary business is that of a "building construction" contractor, one (1) member shall be a person whose primary business is that of a "specialty construction" contractor, as such construction terms are defined in this chapter, one (1) member shall be a subcontractor with a license no higher than a class "A", one (1) member shall be a "construction manager," and one (1) member shall be a registered professional engineer. All contractor members of the board shall be contractors holding a current unrevoked license at the time of their appointment, actively engaged in the contracting business and have been so engaged for a period of not less than five (5) years preceding the date of their appointment, and who shall so continue in the contracting business during their term of office. Each member of the board next preceding his appointment shall have been a citizen and resident of the state of Idaho for at least five (5) years. The governor shall appoint a member to said board for a term of three (3) years, and no member shall be appointed to more than two (2) consecutive terms. Each member shall hold office after the expiration of their own term until their successor has been duly appointed and qualified. Vacancies on the board for any cause shall be filled by appointment by the governor for the balance of the unexpired term. The governor may remove any member of the board for misconduct, incompetence or neglect of duty. Each member of the board shall receive a certificate of appointment from the governor, and before entering upon the discharge of their duties, shall file with the secretary of state the constitutional oath of office.

History.

1941, ch. 115, § 5, p. 212; am. 1955, ch. 223, § 4, p. 480; am. 1974, ch. 13, § 148, p. 138; am. 1998, ch. 410, § 2, p. 1267; am. 1999, ch.

201, § 8, p. 529; am. 2000, ch. 438, § 1, p. 1396; am. 2001, ch. 300, § 4, p. 1085; am. 2001, ch. 301, § 1, p. 1098.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

Division of building safety, § 67-2601A.
Secretary of state, § 67-901 et seq.

54-1906. Principal place of business. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1941, ch.
115, § 6, p. 212; am. 1999, ch. 201, § 9, p. 529,

as amended by 2001, ch. 183, § 22, was re-
pealed by S.L. 2001, ch. 300, § 5.

54-1907. Duties and powers of the board — Seal. — The board is authorized and directed to prescribe and amend rules consistent with this chapter for the administration of this chapter and to effectuate the purpose thereof, and for the investigation, classification, examination and licensing of public works contractors. The board shall adopt a seal, having upon it the words "Public Works Contractors License Board — State of Idaho." The care and custody of the seal shall be with the administrator. Any member of the board may administer oaths and may take testimony concerning all matters within the jurisdiction of the board.

History.

1941, ch. 115, § 7, p. 212; am. 1999, ch. 201,
§ 10, p. 529; am. 2001, ch. 300, § 6, p. 1085.

54-1908. Meetings — Quorum. — The board shall hold not less than four (4) regular meetings each year, on a day not later than the fifteenth day of the month in each of the months of January, April, July and October, for the purpose of transacting such business as may properly come before it. At the April meeting of each year the board shall elect officers. Special or regular monthly meetings of the board may be held at such times as the board may provide in the rules. Four (4) members of the board shall constitute a quorum. Two (2) members of the board may call a special meeting at any time. Due notice of each meeting of the board and the time and place thereof shall be given each member in the manner prescribed in the rules. Each member of the board shall be compensated as provided by section 59-509(n), Idaho Code, and paid from the public works contractors license board account [fund].

History.

1941, ch. 115, § 8, p. 212; am. 1955, ch. 223,
§ 5, p. 480; am. 1969, ch. 18, § 2, p. 30; am.
1980, ch. 247, § 66, p. 582; am. 1987, ch. 55,

§ 1, p. 91; am. 1998, ch. 410, § 3, p. 1267; am.
1999, ch. 201, § 11, p. 529; am. 2012, ch. 36,
§ 2, p. 107.

STATUTORY NOTES

Cross References.

Public works contractors license fund,
§ 54-1921.

Amendments.

The 2012 amendment, by ch. 36, substituted "59-509(n)" for "59-509(h)" in the last sentence.

Compiler's Notes.

The bracketed insertion at the end of the section was added by the compiler to provide the correct name of the referenced fund. See § 54-1921.

54-1909. Reports. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1941, ch. 115, § 9, p. 212, was repealed by S.L. 1993, ch. 237, § 2, effective January 1, 1994.

54-1910. Examinations, qualifications and applications. — Under such rules as the board may adopt, the administrator shall have the power and authority to investigate, classify, and to qualify applicants for licenses under this chapter, by written or oral examinations, or both.

The qualifications to be required of an applicant by the board are as follows:

(a) Such degree of experience, and such general knowledge of the building, safety, health and lien laws of the state, and of the rudimentary administrative principles of the contracting business, as may be deemed necessary by the board for the safety and protection of the public. The applicant if an individual may qualify as to the aforementioned experience and knowledge by personal appearance or by the appearance of his responsible managing employee, and if a copartnership or corporation, limited liability company, limited liability partnership and any other combination or organization, by the appearance of the responsible managing officer or member of the personnel of such applicant. If the person qualifying by examination as to experience and knowledge shall, for any reason whatsoever, cease to be connected with the licensee to whom the license is issued, such licensee shall so notify the administrator in writing within ten (10) days from such cessation. If such notice is given, the license shall remain in force for a reasonable length of time, to be determined by rules of the board. If such licensee fails to so notify the administrator within said ten (10) day period, then at the end of such ten (10) day period, the license of such licensee shall be automatically suspended. A suspended license shall be reinstated upon the filing with the administrator of an affidavit executed by the licensee or a member of the suspended firm, to the effect that the individual originally examined for the firm has been replaced by another individual who has been qualified by examination as herein provided, and who shall not have had a license suspended or revoked, nor have been connected with any licensee who has had a license suspended or revoked for reasons that should preclude him from personally qualifying as to good character as herein required of an applicant.

(b) The possession by the applicant of good character. Lack of character may be established by showing any of the following:

(1) That the applicant has committed or done any act which, if committed or done by any licensed contractor, would be grounds for the suspension or revocation of a contractor's license; or

(2) That the applicant has committed or done any act involving dishonesty, fraud or deceit whereby the applicant has been benefited or whereby some injury has been sustained by another; or

(3) That the applicant bears a bad reputation for honesty and integrity; or

(4) That the applicant has been convicted of a felony.

(c) That he has never been refused a license or had a license revoked for reasons that would preclude the granting of the license applied for.

(d) No license shall be issued to a corporation, copartnership, limited liability company, limited liability partnership or other combination or organization if any responsible officer of such corporation, or other combination or organization, or any member of such copartnership does not meet the qualifications required of an applicant other than those qualifications relating to knowledge and experience.

(e) To obtain an original license under this chapter, the applicant shall submit to the administrator, on such forms as the administrator shall prescribe, accompanied by the required fee for the class of license applied for, and in accordance with such rules as may be deemed necessary and adopted by the board in order to carry out the foregoing provisions of this section, a sworn written application for such license, containing the statement that applicant desires the issuance of a license under the terms of this chapter. The information contained in such application forms shall include a complete statement of the general nature of applicant's contracting business, and stating concisely applicant's experience and qualifications as a contractor; the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application; a general description of applicant's machinery and equipment; a complete financial statement which may include a letter from applicant's bonding company stating the amount of the applicant's bonding capability per project and in the aggregate, on such forms and disclosing such information as shall be required by the administrator, together with such additional information as may be required by the administrator to determine the applicant's fitness for a license under this chapter. The application shall contain, if by an individual, the individual's name, social security number and business address; if by a copartnership, its business address and the names and addresses of all partners; and if by a corporation, association, limited liability company, limited liability partnership or other organization, its business address and the names and addresses of the president, vice president, secretary, and chief construction managing officers, or responsible managing employee. A request for a licensing class higher than that for which the applicant qualifies must go to the administrator for review and may be approved up to the bond limit. A final appeal of a decision of the administrator may be made to the board.

History.

1941, ch. 115, § 10, p. 212; am. 1969, ch. 18, § 3, p. 30; am. 1999, ch. 201, § 12, p. 529; am.

2001, ch. 300, § 7, p. 1085; am. 2001, ch. 301, § 2, p. 1098.

54-1911. Filing, issuance and denial of licenses — Fees not refunded. — Applications for original licenses, together with the fees therefor, shall be filed with the administrator. After such examination and investigation as may be prescribed by rule, in accordance with the provisions of this chapter, if no valid reason exists for further investigation of applicant, the administrator shall issue a license to applicant permitting him to engage in business as a contractor under the terms of this chapter for the licensing period designated. If the information brought to the attention of the administrator concerning the character and integrity of an applicant is such that it would appear proper to deny the application, the applicant shall be notified by certified mail to show cause within such time, not less than five (5) days, nor more than thirty (30) days, why the application should not be denied.

Fees accompanying original applications under this section are for the administration and enforcement of the provisions of this chapter and shall not be refunded to the applicant.

History. 535; am. 1980, ch. 130, § 1, p. 287; am. 1993, 1941, ch. 115, § 11, p. 212; am. 1955, ch. ch. 237, § 3, p. 819; am. 1999, ch. 201, § 13, p. 223, § 6, p. 480; am. 1965, ch. 227, § 2, p. 529; am. 2001, ch. 300, § 8, p. 1085.

STATUTORY NOTES

Effective Dates. the act shall be in full force and effect on
Section 7 of S.L. 1993, ch. 237 provided that January 1, 1994.

JUDICIAL DECISIONS

Cited in: Mitchell v. Siqueiros, 99 Idaho 396, 582 P.2d 1074 (1978).

54-1912. Expiration and renewal of licenses — Fees. — All contractors required by the provisions of this section to be licensed, shall be licensed for a period of twelve (12) consecutive calendar months.

Each licensing period shall start on the first day of a calendar month and end on the last day of the twelfth month from the date of beginning.

Licensing periods shall expire at midnight on the last day of the licensing period.

Application for renewal of a current license prior to its expiration date shall authorize operation as a contractor by such licensee until actual issuance of such renewal license for the ensuing year or until the final decision of the board is rendered in any proceeding. An applicant for renewal of a license issued under this chapter shall not be required to take any other or further examination to obtain such renewal license, provided that at the time of such application his license has not been suspended or permitted to lapse or expire for any cause for a period of one (1) year or more. All applications for renewal of license shall be made on forms prescribed by the administrator and shall be accompanied by the annual renewal fee and a

complete current financial statement on such forms and disclosing such information as shall be required by rule, duly certified as true by the applicant, and if a copartnership, limited liability company or limited liability partnership by a member thereof, and if a corporation, by its executive or financial officer; such renewal application shall be filed prior to the first day of such renewal licensing period. Fees accompanying renewal applications under this section are for the administration and enforcement of the provisions of this chapter and shall not be refunded to the applicant.

The license issued under this chapter shall be signed both by the administrator and by the licensee, shall be nontransferable, and shall be displayed in the licensee's main office or chief place of business, and satisfactory evidence of the possession thereof and of the current annual renewal thereof shall be exhibited by licensee upon demand.

A surviving member or members of a licensed copartnership, limited liability company or limited liability partnership by reason of death shall be entitled to continue in business under such license until the expiration date thereof, provided due application for permission is made to the administrator within thirty (30) days after death of the member, and the application is approved by the administrator in accordance with rules.

All licensees shall report to the administrator all changes of personnel, name style or addresses recorded under this chapter within thirty (30) days after the changes are made.

History.

1941, ch. 115, § 12, p. 212; am. 1955, ch. 223, § 7, p. 480; am. 1965, ch. 227, § 3, p. 535; am. 1969, ch. 18, § 4, p. 30; am. 1980, ch.

130, § 2, p. 287; am. 1993, ch. 237, § 4, p. 819; am. 1999, ch. 201, § 14, p. 529; am. 2001, ch. 300, § 9, p. 1085.

STATUTORY NOTES**Cross References.**

Military exemption from fees, § 67-2602A.

the act shall be in full force and effect on January 1, 1994.

Effective Dates.

Section 7 of S.L. 1993, ch. 237 provided that

54-1913. Records, lists and information. — The administrator shall maintain, open to public inspection during office hours, a complete record of all retained applications, licenses issued, licenses renewed, data collected through the provisions of section 54-1904A, Idaho Code, and all revocations, cancellations and suspensions of licenses, and shall furnish a certified copy of any license issued, upon receipt of the sum of fifty cents (50¢), which certified copy shall be received in all courts and elsewhere as evidence of the facts stated therein.

Whenever funds are available for the purpose, the administrator shall publish a list of the names and addresses of contractors licensed under this chapter and such further information with respect to this chapter and its administration as the administrator deems proper. The administrator may furnish the lists to such public works and building departments, public officials or public bodies, and other persons interested in or allied with the building and construction industry in this or any other state as deemed

advisable, and at such intervals as deemed necessary, whenever funds therefor are available. Copies of the lists may also be furnished by the administrator upon request to any firm or individual upon payment of a reasonable fee fixed by the board.

Whenever funds are available for the purpose, the administrator may publish and disseminate to licensees and to public officials or other persons interested in or allied with the building and construction industry, such information with relation to the administration and enforcement of this chapter as deemed necessary to carry out its purposes.

History.

1941, ch. 115, § 13, p. 212; am. 1974, ch. 13, § 149, p. 138; am. 1980, ch. 130, § 3, p. 287; am. 1990, ch. 213, § 80, p. 480; am. 1993, ch.

237, § 5, p. 819; am. 1999, ch. 201, § 15, p. 529; am. 2001, ch. 183, § 23, p. 613; am. 2001, ch. 300, § 10, p. 1085; am. 2005, ch. 213, § 27, p. 637.

STATUTORY NOTES

Amendments.

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 183, § 23, in the first undesignated paragraph, deleted "in Boise, Idaho," preceding "open to public inspection"; and substituted "cancellations" for "cancelations".

The 2001 amendment, by ch. 300, § 10, substituted "administrator" for "board" throughout; substituted "chapter" for "act" throughout; and in the third undesignated paragraph, deleted "of the board" following "disseminate to licensees".

Effective Dates.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

Section 7 of S.L. 1993, ch. 237 provided that the act shall be in full force and effect on January 1, 1994.

54-1914. Administrative enforcement proceedings. — (1) The administrator may upon his own motion or at the direction of the board, and shall upon the verified complaint in writing of any person, investigate the actions of any public works contractor within the state and may undertake to reclassify, retype, place on probation, defer or precondition licensure, impose an administrative fine not to exceed twenty thousand dollars (\$20,000) per violation, impose the administrative costs of bringing the action including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one (1) or more of the following acts or omissions:

(a) Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor.

(b) Diversion of funds or property received under express agreement for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose, with intent to defraud or deceive creditors or the owner.

- (c) Willful departure from or disregard of, plans or specifications in any material respect, and prejudicial to another, without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications.
- (d) Willful or deliberate disregard and violation of valid building laws of the state, or of any political subdivision thereof, or of the safety laws or labor laws or compensation insurance laws of the state.
- (e) Misrepresentation of a material fact by an applicant in obtaining a license.
- (f) Aiding or abetting an unlicensed person to evade the provisions of this chapter or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter.
- (g) Failure in any material respect to comply with the provisions of this chapter.
- (h) Acting in the capacity of a contractor under any license issued hereunder except: (1) in the name of the licensee as set forth upon the license, or (2) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter.
- (i) Knowingly accepting a bid from, or entering into a contract with another contractor for a portion of a public works project if at that time such contractor does not possess the appropriate license to do that work as provided in this chapter.
- (j) Willful failure or refusal without legal excuse on the part of a licensee as a contractor to finish a construction project or operation with reasonable diligence, causing material injury to another.
- (k) Willful or deliberate failure by any licensee, or agent or officer thereof, to pay any moneys when due, for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased; or denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay or defraud the person to whom such indebtedness is due.
- (l) Suffers a change in financial circumstances which may impair the licensee's financial responsibility.
- (m) Holding oneself or one's firm out as a public works contractor by engaging in any act meeting the definition or character of a public works contractor as defined herein without a legally required license.
- (n) Failure to comply with subsection (1), (2) or (3) of section 67-2310, Idaho Code.
- (2) The administrator may upon his own motion or at the direction of the board, and shall upon the verified complaint in writing of any licensed public

works contractor eligible to perform public works contracting duties, investigate the actions of any public entity within the state and may impose an administrative fine not to exceed five thousand dollars (\$5,000) per violation or impose the administrative costs of bringing the action including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, if the public agency contracts for public works construction with an unlicensed or improperly licensed contractor or knowingly awards a contract based upon a bid or proposal not in compliance with subsection (1) or (2) of section 67-2310, Idaho Code.

History.

1941, ch. 115, § 14, p. 212; am. 1965, ch. 227, § 4, p. 535; am. 1982, ch. 147, § 3, p. 409; am. 1999, ch. 201, § 16, p. 529; am. 2000,

ch. 318, § 1, p. 1073; am. 2001, ch. 300, § 11, p. 1085; am. 2005, ch. 213, § 28, p. 637; am. 2007, ch. 127, § 1, p. 382.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 127, added subsection (1)(n); and in subsection (2), added "or knowingly awards a contract based upon a bid or proposal not in compliance with subsection (1) or (2) of section 67-2310, Idaho Code."

Effective Dates.

Section 4 of S.L. 1982, ch. 147 declared an emergency. Approved March 23, 1982.

54-1914A. Impaired financial responsibility — Notification — Hearing — Licensee's statement. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 54-1914A, as added by 1965, ch. 227, § 5, p. 535;

am. 1999, ch. 201, § 17, p. 529, was repealed by S.L. 2001, ch. 300, § 12.

54-1915. Procedure for imposition of discipline. — (1) Upon the filing of a verified complaint with the administrator charging a licensee or public entity with the commission of any act constituting a cause for disciplinary action within two (2) years prior to the date of filing, or upon such a finding made by the administrator following an investigation, the administrator shall forthwith issue a notice, accompanied by a copy of the complaint, directing the licensee or public entity, within ten (10) days after service of the notice, to appear by filing with the administrator a verified answer to the complaint.

(2) The administrator shall have the power to appoint, by an order in writing, a hearing officer to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses.

(3) Service of the notice and complaint upon the licensee or public entity shall be fully effected by mailing a true copy of the notice and complaint by certified mail addressed to the licensee at his last address of record with the administrator or to the public entity at its principal place of business. Service of the notice and complaint shall be complete at the time of deposit in accordance with the provisions of the Idaho rules of civil procedure relating to service by mail.

(4) The hearing shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Idaho rules of administrative procedure.

(5) Following the hearing, the hearing officer shall issue recommended findings of fact, conclusions of law, and order. The recommended order may:

(a) Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.

(b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.

(c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a contractor disclosed at the hearing and may further provide that until such conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the administrator.

(d) Provide for the imposition of any of the sanctions provided by section 54-1914, Idaho Code.

(6) Following a review of the entire hearing record, the administrator shall issue a final decision.

History.

1941, ch. 115, § 15, p. 212; am. 1993, ch. 216, § 72, p. 587; am. 1999, ch. 201, § 18, p.

529; am. 2001, ch. 300, § 13, p. 1085; am. 2005, ch. 213, § 29, p. 637.

STATUTORY NOTES

Cross References.

Notice by mail, § 60-109A.

54-1916. Judicial review — Appeals procedure. — (1) The applicant, public entity, or licensee, as the case may be, shall have the right to judicial review of an action of the administrator refusing issuance of a license, or actions taken by the board [administrator] pursuant to section 54-1914, Idaho Code, in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) Appeals may be taken from the judgment of said district court to the supreme court of Idaho by either party in the same manner that appeals are taken and records prepared on appeal in civil actions.

(3) On any appeal to the district court by a licensee, the court may, in its discretion, upon the filing of a proper bond by the licensee in an amount to be fixed by the court, but not less than one thousand dollars (\$1,000), guaranteeing the compliance by the licensee with specific conditions imposed upon him by the board's [administrator's] decision, if any, permit the licensee to continue to do business as a contractor pending entry of judgment by the district court.

(4) On any appeal to the district court by a public entity, the court may, in its discretion, suspend the action taken by the board [administrator] pursuant to section 54-1914, Idaho Code, pending entry of judgment by the district court.

History.

1941, ch. 115, § 16, p. 212; am. 1993, ch. 216, § 73, p. 587; am. 1993, ch. 237, § 6, p.

819; am. 1999, ch. 201, § 19, p. 529; am. 2001, ch. 300, § 14, p. 1085; am. 2005, ch. 213, § 30, p. 637.

STATUTORY NOTES**Amendments.**

This section was amended by two 1993 acts — ch. 216, § 73, effective July 1, 1993, and ch. 237, § 6, effective January 1, 1994 — which appear to conflict. Technical corrections made by S.L. 1999, ch. 201, § 19 resolved any conflict.

The 1993 amendment, by ch. 216, § 73, in the section heading substituted “Judicial” for “Court” preceding “review”; in the first sentence of the first paragraph substituted “judicial review” for “appeal to the district court of the third judicial district of the state of Idaho, from any decision” following “shall have the right to”; added “the action of” preceding “the board”; deleted “in” preceding “refusing, cancelling,”; added at the end of the first sentence of the first paragraph “in accordance with the provisions of chapter 52, title 67, Idaho Code”; deleted the former second sentence of the first paragraph; and deleted the former second paragraph.

The 1993 amendment, by ch. 237, § 6, in the first sentence of the first paragraph sub-

stituted “fourth” for “third” following “appeal to the district court of the” and preceding “judicial district of the state of Idaho, from any decision” — language which was deleted by ch. 216. Therefore, the word “fourth” was bracketed by the compiler in the first sentence of the first paragraph. Also, the amendment by ch. 237, § 6, in the middle of the last paragraph substituted “one thousand dollars (\$1,000),” for “\$1,000.00,” preceding “guaranteeing the compliance”.

Compiler’s Notes.

The bracketed insertions in subsections (1), (3), and (4) were added by the compiler to reflect the 2001 amendment of § 54-1914, which transferred the enumerated powers and duties in that section from the board to the administrator of the division of building safety.

Effective Dates.

Section 7 of S.L. 1993, ch. 237 provided that the act shall be in full force and effect on January 1, 1994.

54-1917. Renewal of suspended or revoked license. — After suspension or revocation of the license upon any of the grounds set forth in this chapter, the administrator may renew the license upon proof of compliance by the contractor with all provisions of the decision as to renewal or, in the absence of such decision or any provisions therein as to renewal, in the sound discretion of the administrator. After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be renewed or reissued within a period of one (1) year after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with. At any time before a case is finally submitted to the board for decision, whether upon an original hearing, or upon a rehearing, a complaint or answer may, upon the motion of either party, and with the consent of the board, or upon the board’s own motion, be amended. If new charges are alleged in an amended complaint, the defendant may, upon request, be allowed ten (10) days to prepare his defense to such new charges.

History.

1941, ch. 115, § 17, p. 212; am. 2001, ch. 300, § 15, p. 1085.

54-1918. Subpoenas and process. — In any investigation, proceeding or hearing which the administrator is empowered to institute, conduct or hold, the board, and each member thereof, may administer oaths, certify to

official acts, issue subpoenas for the attendance of witnesses and the production of books, papers and records, in like manner and to the same extent as courts of record, and with their aid when necessary. The process issued by the board, or any member thereof, shall extend to all parts of the state and may be served by any person authorized to serve process, or by any person designated for that purpose by the board or a member thereof. The person executing any such process shall receive such compensation as may be allowed by the board and not to exceed the fees prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for the payment of fees for witnesses. Any citation, notice or other process or any paper or document required by this chapter to be served on any party may be personally served as provided in the code of civil procedure, with the same effect as if served by mail in the manner provided in this chapter.

History.

1941, ch. 115, § 19, p. 212; am. 1999, ch. 201, § 20, p. 529; am. 2001, ch. 300, § 16, p. 1085.

STATUTORY NOTES**Compiler's Notes.**

The code of civil procedure, referred to in this section, is a division of the Idaho Code, consisting of Titles 1 through 13.

54-1919. Revocation by court. — The suspension or revocation of a license as provided in this act may also be included in any action otherwise proper in any court involving the licensee's performance of his legal obligation as a contractor.

History.

1941, ch. 115, § 20, p. 212; am. 1999, ch. 201, § 21, p. 529.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1941, ch. 115, which is codified as §§ 54-1901 to 54-1904, 54-1905, 54-1907, 54-1908, 54-1910 to 54-1914, 54-1915 to 54-1920, and 54-1921 to 54-1924. Probably the reference should be to "sections 54-1901 to 54-1924, Idaho Code."

54-1920. Penalties — Injunction. — (1) Any person, firm, copartnership, corporation, limited liability company, limited liability partnership, association or other organization acting in the capacity of a public works contractor within the meaning of this chapter, without a license as herein provided or fails to comply with the provisions of subsection (1), (2) or (3) of section 67-2310, Idaho Code, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in the county jail for a term not to exceed one (1) year or by both such fine and imprisonment, at the discretion of the court. The same penalties shall apply, upon conviction to any member of a copartnership, or to any construction, managing or directing officer of any corporation, limited liability company or limited liability partnership,

or other organization consenting to, participating in, or aiding or abetting any such violation of this chapter.

(2) Every public officer who knowingly lets a public contract to any person, firm, copartnership, corporation, limited liability company, limited liability partnership, association or other organization who does not hold a license as required by the provisions of this chapter or knowingly fails to comply with the provisions of subsection (1) or (2) of section 67-2310, Idaho Code, shall be guilty of a misdemeanor and upon conviction, punishable as provided in this section, unless, however, there be no qualified bidder willing to undertake the public works covered by the contract. No person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and providing that he was a duly licensed contractor at all times during the performance of such act or contract.

(3) In addition to any other penalties specified in this section, whenever any person violates the provisions of this chapter by acting as a public works contractor without a license, the administrator may maintain an action in the name of the state of Idaho to enjoin the person from any further violations. Such action may be brought either in the county in which the acts are claimed to have been or are being committed, in the county where the defendant resides or in Ada county. Upon the filing of a verified complaint in the district court, the court, if satisfied that the acts complained of have been or probably are being or may be committed, may issue a temporary restraining order and/or preliminary injunction, without bond, enjoining the defendant from the commission of any such act or acts constituting the violation. A copy of the complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other similar civil actions. If the commission of the act or acts is established, the court shall enter a decree permanently enjoining the defendant from committing such act or acts. If an injunction issued under the provisions of this section is violated, the court, or the judge thereof at chambers, may summarily try and punish the offender for contempt of court.

History.

1941, ch. 115, § 21, p. 212; am. 1955, ch. 223, § 8, p. 480; am. 1969, ch. 18, § 5, p. 30;

am. 1999, ch. 201, § 22, p. 529; am. 2000, ch. 318, § 2, p. 1073; am. 2002, ch. 127, § 2, p. 355; am. 2007, ch. 127, § 2, p. 382.

STATUTORY NOTES

Cross References.

Contempts, § 7-601 et seq.

Amendments.

The 2007 amendment, by ch. 127, in the first sentence in subsection (1), inserted "or fails to comply with the provisions of subsection (1), (2) or (3) of section 67-2310, Idaho Code"; and in the first sentence of subsection

(2), inserted "or knowingly fails to comply with the provisions of subsection (1) or (2) of section 67-2310, Idaho Code."

Effective Dates.

Section 6 of S.L. 1969, ch. 18 provided that the act should be in full force and effect from and after May 1, 1969.

JUDICIAL DECISIONS**Action may be Maintained.**

The court allowed an action for fraud to recover under a contract otherwise illegal, where to have done otherwise would have allowed defendant general contractor, who entered a joint venture with plaintiff unlicensed contractor to bid projects jointly as a

public works contractor under the general contractor's name pursuant to an oral agreement to divide all profits equally, to benefit from the agreement by engaging in fraudulent conduct and then seeking to avoid enforcement of the oral agreement. *Trees v. Kersey*, 138 Idaho 3, 56 P.3d 765 (2002).

54-1920A. Enforcement. — Upon request of the administrator, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in section 54-1920, Idaho Code. The attorney general may delegate the authority and duty under this section to the prosecuting attorney of the county in which the action may arise.

History.

I.C., § 54-1920A, as added by 2002, ch. 127, § 3, p. 355.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.

54-1921. Public works contractors license fund — Appropriation. — The state treasurer shall be custodian of a fund, which is hereby created, to be known as the "Public Works Contractors License Fund," into which shall be paid and deposited all funds accruing or received under any and all provisions of this chapter. All moneys from whatever source accruing to or received by said fund are hereby appropriated for the payment of the cost and expense of the administration and enforcement of this chapter, as herein provided. Any moneys remaining in said fund on the last day of each year, as the term "year" is defined in this chapter, shall continue to be appropriated for the purposes of this chapter.

History.

1941, ch. 115, § 22, p. 212; am. 1955, ch. 223, § 9, p. 480; am. 1965, ch. 227, § 6, p.

535; am. 1999, ch. 201, § 23, p. 529; am. 2001, ch. 300, § 17, p. 1085.

STATUTORY NOTES**Cross References.**

State treasurer, § 67-1201 et seq.
"Year" defined, § 54-1901.

that except as otherwise provided herein, it shall take effect on and after January 1, 1956.

Section 7 of S.L. 1965, ch. 227 declared an emergency. Approved March 26, 1965.

Effective Dates.

Section 10 of S.L. 1955, ch. 223 provided

54-1922. Act superior to all laws in conflict. — Wherever any provisions of the existing laws of the state of Idaho are in conflict with the provisions of this act, the provisions of this act shall control and supersede all such laws.

History.

1941, ch. 115, § 23, p. 212; am. 1999, ch. 201, § 24, p. 529.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1941, ch. 115, which is codified as §§ 54-1901 to 54-1904, 54-1905, 54-1907, 54-1908, 54-1910 to

54-1914, 54-1915 to 54-1920, and 54-1921 to 54-1924. Probably the reference should be to "sections 54-1901 to 54-1924, Idaho Code."

54-1923. Title. — This act shall be known as "Public Works Contractors License Act."

History.

1941, ch. 115, § 24, p. 212.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1941, ch. 115, which is codified as §§ 54-1901 to 54-1904, 54-1905, 54-1907, 54-1908, 54-1910 to

54-1914, 54-1915 to 54-1920, and 54-1921 to 54-1924. Probably the reference should be to "sections 54-1901 to 54-1924, Idaho Code."

54-1924. Separability. — If any part or parts of this act shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of any part or parts thereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid.

History.

1941, ch. 115, § 25, p. 212; am. 1999, ch. 201, § 25, p. 529.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1941, ch. 115, which is codified as §§ 54-1901 to 54-1904, 54-1905, 54-1907, 54-1908, 54-1910 to 54-1914, 54-1915 to 54-1920, and 54-1921 to 54-1924. Probably the reference should be to "sections 54-1901 to 54-1924, Idaho Code."

Effective Dates.

Section 27 of S.L. 1941, ch. 115 declared an emergency. Approved March 8, 1941.

54-1925. Public Contracts Bond Act — Short title. — This act may be cited as the Public Contracts Bond Act.

History.

1965, ch. 28, § 1, p. 43.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1965, ch.

28, which is compiled as §§ 54-1925, 54-1926, and 54-1927 to 54-1930.

JUDICIAL DECISIONS

ANALYSIS

Application.
In general.

Application.

The public contracts bond act cannot apply to an out-of-state highway project payment bond. *Beco Corp. v. Roberts & Sons Constr. Co.*, 114 Idaho 704, 760 P.2d 1120 (1988), overruled on other grounds by *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 803 P.2d 978 (1990).

Although Idaho Public Contracts Bond Act, §§ 54-1925 through 54-1930, provides a right of action to subcontractors to sue on a payment bond, it does not apply to an out-of-state payment bond on an out-of-state project. *Seubert Excavators, Inc. v. Eucon Corp.*, 125 Idaho 744, 874 P.2d 555 (Ct. App. 1993), rev'd in part, 125 Idaho 409, 871 P.2d 826 (1994).

In General.

The Public Contracts Bond Act, §§ 54-1925

to 54-1930, was enacted to protect persons who furnish labor or materials to public works projects and serves a remedial purpose. Normally, in private construction projects, those who furnish labor and materials without receiving payment may file and foreclose mechanics' liens; however, because such liens cannot be asserted against public property, the payment bond is required by statute. *LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc.*, 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985).

Cited in: *Consolidated Supply Co. v. Babbitt*, 96 Idaho 636, 534 P.2d 466 (1975); *Eimco Div. v. United Pac. Ins. Co.*, 109 Idaho 762, 710 P.2d 672 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. — 17 Am. Jur. 2d, Contractors' Bonds, § 25 et seq.

A.L.R. — Building contractor's liability, upon bond or other agreement to indemnify owner, for injury or death of third persons resulting from owner's negligence. 27 A.L.R.3d 663.

Liability of subcontractor upon bond or other agreement indemnifying general contractor against liability for damage to person or property. 13 A.L.R.4th 663.

54-1926. Performance and payment bonds required of contractors for public buildings and public works of the state, political subdivisions and other public instrumentalities — Requirements for bonds — Governmental obligations. — Before any contract for the construction, alteration, or repair of any public building or public work or improvement of the state of Idaho, or of any county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or of any officer, board, commission, institution, or agency of the foregoing, is awarded to any person, he shall furnish to the state of Idaho, or to such county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or to such officer, board, commission, institution, or agency thereof, bonds which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond in any amount to be fixed by the contracting body, but in no event less than eighty-five percent (85%) of the contract amount conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Said bond shall be solely for the protection of the public body awarding the contract.

(2) A payment bond in an amount to be fixed by the contracting body but in no event less than eighty-five percent (85%) of the contract amount, solely for the protection of persons supplying labor or materials, or renting, leasing, or otherwise supplying equipment to the contractor or his subcontractors in the prosecution of the work provided for in such contract.

(3) Public bodies requiring a performance bond or payment bond in excess of fifty percent (50%) of the total contract amount shall not be authorized to withhold from the contractor or subcontractor any amount exceeding five percent (5%) of the total amount payable as retainage. Further, the public body shall release to the contractor any retainage for those portions of the project accepted by the contracting public body and the contractors as complete within thirty (30) days after such acceptance. Contractors, contracting with subcontractors pursuant to contract work with a public body, shall not be authorized to withhold from the subcontractor any amount exceeding five percent (5%) of the total amount payable to the subcontractor as retainage. The contractor shall remit the retainage to the subcontractor within thirty (30) days after completion of the subcontract.

Each bond shall be executed by a surety company or companies duly authorized to do business in this state, or the contractor may deposit any of the type of government obligations listed in subsection (2)(h) of section 54-1901, Idaho Code, in lieu of furnishing a surety company performance or payment bond or bonds. In the case of contracts of the state or a department, board, commission, institution, or agency thereof the aforesaid bonds shall be payable to the state, or particular state agency where authorized. In case of all other contracts subject to this chapter, the bonds shall be payable to the public body concerned.

Said bonds shall be filed in the office of the department, board, commission, institution, agency or other contracting body awarding the contract.

Nothing in this section shall be construed to limit the authority of the state of Idaho or other public body hereinabove mentioned to require a performance bond or other security in addition to these, or in cases other than the cases specified in this chapter.

It shall be illegal for the invitation for bids, or any person acting or purporting to act, on behalf of the contracting body to require that such bonds be furnished by a particular surety company, or through a particular agent or broker.

History.

1965, ch. 28, § 2, p. 43; am. 1979, ch. 124, § 1, p. 383; am. 1980, ch. 199, § 1, p. 460; am. 1986, ch. 67, § 2, p. 189; am. 1992, ch. 141, § 1, p. 434; am. 1999, ch. 166, § 1, p. 453; am. 2005, ch. 213, § 31, p. 637.

JUDICIAL DECISIONS

ANALYSIS

- Application.
- Attorney's fees.
- Enforcement by third party.
- In general.
- Materials.
- Waiver.

Application.

The statutory bonding requirement applies to a sanitary landfill or solid waste disposal system for the operation of which a county solicited bids. *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978).

Attorney's Fees.

Where the defendant furnished the payment bond required by this section and was considered under this section and in the contract bond as the contractor, the bonding company was liable as defendant's surety for attorney's fees to plaintiff as plaintiff had a direct contractual relationship with defendant. *Consolidated Supply Co. v. Babbitt*, 96 Idaho 636, 534 P.2d 466 (1975).

Enforcement by Third Party.

Even if a county's contract with a construction company is not absolutely void as between the parties to it, the lowest responsible bidder may nevertheless be entitled to injunctive relief against the company's continued performance without a public works contractor's license, and the lowest responsible bidder should be awarded reasonable attorney fees for the original proceedings in the trial court and on appeal. *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978).

In General.

The public contracts bond act, §§ 54-1925 to 54-1930, was enacted to protect persons

who furnish labor or materials to public works projects and serves a remedial purpose. Normally, in private construction projects, those who furnish labor and materials without receiving payment may file and foreclose mechanics' liens; however, because such liens cannot be asserted against public property, the payment bond is required by statute. *LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc.*, 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985).

Materials.

Where tire company supplied tires and antifreeze necessary for operation of loader to a contractor, these were "materials" within the intent of subsection (2) of this section. *Weippe ex rel. Les Schwab Tire Centers of Idaho, Inc. v. Yarno*, 96 Idaho 319, 528 P.2d 201 (1974).

Waiver.

This section requires a bond executed by a surety authorized to do business in Idaho, and a county is not at liberty to waive that requirement in favor of some alternative form of security. *McKay Constr. Co. v. Ada County Bd. of County Comm'rs*, 99 Idaho 235, 580 P.2d 412 (1978).

Cited in: *Consolidated Concrete Co. v. Empire W. Constr. Co.*, 100 Idaho 234, 596 P.2d 106 (1979); *H-K Contractors v. City of Firth*, 101 Idaho 224, 611 P.2d 1009 (1979); *Oldcastle Precast, Inc. v. Parktowne Constr., Inc.*, 142 Idaho 376, 128 P.3d 913 (2005).

54-1926A. Use of government obligations instead of surety bonds. — (a) If a person is required under a law of the state of Idaho to give a surety bond, the person may give a government obligation, as defined in subsection (2)(h) of section 54-1901, Idaho Code. The government obligation shall:

- (1) Be given to the official having authority to approve the surety bond, or its authorized custodian;
- (2) Be in an amount equal at fair market value to the penal sum of the required surety bond; and
- (3) Authorize the official receiving the obligation to collect or sell the obligation if the person defaults on a required condition.

(b)(1) An official receiving a government obligation under subsection (a) of this section may deposit it with:

1. The state treasurer;
2. A national or state chartered bank; or
3. A depository designated by the state treasurer.

(2) The state treasurer, bank, or depository shall issue a safekeeping receipt that describes the obligation deposited.

(c) Using a government obligation instead of a surety bond for security is the same as using:

- (1) A corporate surety bond;
- (2) A certified check;

- (3) A bank draft;
- (4) A post office money order; or
- (5) Cash.

(d) When security is no longer required, a government obligation given instead of a surety bond shall be returned to the person giving the obligation. If a person supplying labor or material to a contractor defaulting under the public contracts bond act, sections 54-1925 through 54-1930, Idaho Code, files with the contracting body the application and affidavit provided under section 54-1927, Idaho Code, the contracting body:

(1) May return to the contractor the government obligation given as security or proceeds of the government obligation given under the public contracts bond act, sections 54-1925 through 54-1930, Idaho Code, only after the ninety (90) day period for bringing a civil action under section 54-1927, Idaho Code;

(2) Shall hold the government obligation or the proceeds subject to the order of the court having jurisdiction of the action if a civil action is brought in the ninety (90) day period.

(e) The provisions of this section do not affect the:

(1) Priority of a claim of the contracting body against a government obligation given under this section;

(2) Right or remedy of the contracting body for default on an obligation provided under this section;

(3) Authority of a court over a government obligation given as security in a civil action; and

(4) Authority of an official of the state of Idaho authorized by another law to receive a government obligation as security.

(f) To avoid frequent substitution of government obligations, the state treasurer may promulgate rules limiting the effect of the provisions of this section, to a government obligation maturing more than one (1) year after the date the obligation is given as security.

History. § 3, p. 189; am. 1992, ch. 17, § 1, p. 50; am. I.C., § 54-1926A, as added by 1986, ch. 67, 2005, ch. 213, § 32, p. 637.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 4 of S.L. 1986, ch. 67 declared an emergency. Approved March 24, 1986.

54-1927. Claims for labor or material furnished or equipment supplied — Suit on contractor's payment bond — Procedure — Limitation. — Every claimant who has furnished labor or material or rented, leased, or otherwise supplied equipment in the prosecution of the work provided for in such contract in respect of which a payment bond is furnished under this act, and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by him or material or equipment was

furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action to final judgment for the sum or sums justly due him and have execution thereon; provided, however, that any such claimant having a direct contractual relationship with a subcontractor of the contractor furnishing such payment bond but no contractual relationship expressed or implied with such contractor shall not have a right of action upon such payment bond unless he has given written notice to such contractor within ninety (90) days from the date on which such claimant performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the person to whom the material or equipment was furnished or supplied or for whom the labor was done or performed. Each notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business or at his residence.

The contracting body and the agent in charge of its office, is authorized and directed to furnish, to anyone making application therefor who submits an affidavit that he has supplied labor, equipment, or materials for such work and payment therefor has not been made or that he is being sued on any such bond, or that it is the surety thereon, a certified copy of such bond and the contract for which it was given, which copy shall be prima-facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting body or the agent in charge of its office fixes to cover the actual cost of the preparation thereof.

Every suit instituted on the aforesaid payment bond shall be brought in appropriate court in any county in which the contract was to be performed and not elsewhere; provided, however, that no such suit shall be commenced after the expiration of one (1) year from the date on which the claimant performed the last of the labor or furnished or supplied the last of the material or equipment for which such suit is brought, except, that if the claimant is a subcontractor of the contractor, no such suit shall be commenced after the expiration of one (1) year from the date on which final payment under the subcontract became due.

History.

1965, ch. 28, § 3, p. 43; am. 1980, ch. 199,
§ 2, p. 460.

STATUTORY NOTES**Compiler's Notes.**

The words "this act," in the first paragraph,

refer to S.L. 1965, ch. 28, which is compiled as
§§ 54-1925, 54-1926, and 54-1927 to 54-1930.

JUDICIAL DECISIONS**ANALYSIS**

Action by supplier.
Application.

Attorney fees.
 Construction.
 Materials.
 Notice.
 Scope of protection.
 Statute of frauds.
 Statute of limitations.
 Subcontractors.
 Substantial consumption.

Action by Supplier.

Where there was a significant transactional link between the first job's express contract of lease of forms and the use of the same forms on the second job, the supplier had a right of action on the surety bond for claims arising from the second job as well as the first. *Interform Co. v. Mitchell*, 575 F.2d 1270 (9th Cir. 1978).

Application.

The public contracts bond act cannot apply to an out-of-state highway project payment bond. *Beco Corp. v. Roberts & Sons Constr. Co.*, 114 Idaho 704, 760 P.2d 1120 (1988), overruled on other grounds by *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 803 P.2d 978 (1990).

Attorney Fees.

Sub-contractor was entitled to an award of attorney fees under this section because it was the prevailing party on appeal; there is nothing indicating that the Idaho legislature intended to limit awards of attorney fees under § 54-1929 to the trial court. *Evco Sound & Elecs., Inc. v. Seaboard Sur. Co.*, 148 Idaho 357, 223 P.3d 740 (2009).

Construction.

"Implied contracts", as used in this section, includes contracts implied-in-fact and recoveries in quantum meruit, but excludes implied-in-law contracts and recoveries for unjust enrichment. *Interform Co. v. Mitchell*, 575 F.2d 1270 (9th Cir. 1978).

The provisions of this section with regard to suit on payment bonds follows the provisions of the federal Miller Act, 40 U.S.C.S. § 270a et seq., and should be interpreted consistently with it. *Weippe ex rel. Les Schwab Tire Centers of Idaho, Inc. v. Yarno*, 96 Idaho 319, 528 P.2d 201 (1974); *Interform Co. v. Mitchell*, 575 F.2d 1270 (9th Cir. 1978).

Materials.

Where tire company supplied tires and anti-freeze necessary for operation of a loader, these were "materials." *Weippe ex rel. Les Schwab Tire Centers of Idaho, Inc. v. Yarno*, 96 Idaho 319, 528 P.2d 201 (1974).

Notice.

The notice substantially complied with the provisions of this section where it stated the

aggregate claim of parent and subsidiary for material furnished for construction of the school, informing contractor that invoices identifying charges comprising the claim were available upon request but no request was made and where no prejudice to the contractor was apparent from the fact that the claim asserted against him at trial was smaller than the claim stated in the notice. *School Dist. No. 91, Bonneville County v. Taysom*, 94 Idaho 599, 495 P.2d 5 (1972).

Where wholesaler had a direct contractual relationship with contractor, requirement of written notice of wholesaler's claim upon the payment bond for contractor's ineffective repudiation of an order was inapplicable. *Consolidated Supply Co. v. Babbitt*, 96 Idaho 636, 534 P.2d 466 (1975).

Although written notice was served by regular mail rather than by registered or certified mail, such defect was not fatal, since the registered or certified mail requirement is intended to assure receipt of the notice, not to make the described method mandatory so as to deny right of suit when the required written notice within the specified time has actually been given and received. *Consolidated Concrete Co. v. Empire W. Constr. Co.*, 100 Idaho 234, 596 P.2d 106 (1979).

District court did not err in holding that the sub-subcontractor had given timely notice of its claim where the sub-subcontractor gave written notice to the general contractor, and filed suit, within the time periods specified in this section. Surety's argument that work done by the contractor after "substantial completion" should not extend the notice period was rejected. *Evco Sound & Elecs., Inc. v. Seaboard Sur. Co.*, 148 Idaho 357, 223 P.3d 740 (2009).

Scope of Protection.

The scope of protection under this section is limited to two categories of potential claimants. First, those who have a direct contractual relationship with the prime contractor may recover against the payment bond. Second, those who have a direct contractual relationship with one of the prime contractor's "subcontractors" also may recover. *LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc.*, 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985).

The public contracts bond act, §§ 54-1925 to 54-1930, was enacted to protect persons

who furnish labor or materials to public works projects and serves a remedial purpose. Normally, in private construction projects, those who furnish labor and materials without receiving payment may file and foreclose mechanics' liens; however, because such liens cannot be asserted against public property, the payment bond is required by statute. *LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc.*, 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985).

Statute of Frauds.

There is no requirement under this section that the sub-subcontractor have any contractual relationship with the surety; sub-subcontractor's evidence of a contract with the subcontractor was substantial enough to negate surety's denial of liability based upon the statute of frauds. *Evco Sound & Elecs., Inc. v. Seaboard Sur. Co.*, 148 Idaho 357, 223 P.3d 740 (2009).

Statute of Limitations.

Where parties agree to lengthen the statutory period within which suit can be instituted, the law will not interfere and shorten the period. *Weippe v. Yarno*, 94 Idaho 257, 486 P.2d 268 (1971).

Statute of limitations began to run when defendant construction company ceased labor, more than a year before suit was brought, and claim was barred, notwithstanding fact that construction company received notice of default on the contract less than a year before the suit. *Weippe ex rel. Les Schwab Tire Centers of Idaho, Inc. v. Yarno*, 96 Idaho 319, 528 P.2d 201 (1974).

Reasonable extension in payment bond contract of statutory time limit from one year to two years for suits brought under the bond was effective to make timely wholesaler's action against contractor for ineffective repudiation of an order filed 16 months after delivery of supplies. *Consolidated Supply Co. v. Babbitt*, 96 Idaho 636, 534 P.2d 466 (1975).

For the purposes of determining whether the suit on the bond was timely filed under this section, the date of last supply of rental

equipment occurs not at the beginning of a job but at the end, or at the time the equipment is last available for use on the job. *Interform Co. v. Mitchell*, 575 F.2d 1270 (9th Cir. 1978).

Subcontractors.

In litigation concerning payment bonds, the judicial task is to apply the statutory concept of a "subcontractor" to varying fact patterns. On appeal, when faced with mixed issues of fact and law, the reviewing courts will defer to facts found upon substantial evidence but will freely review the application of law to the facts. *LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc.*, 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985).

Where the prime contractor contracted with a company to provide fabricated steel for a public works project, and such contract embraced more than one million dollars and constituted approximately ten percent of the total prime contract, and such contract was of such importance that the prime contractor secured personal performance guarantees, such provider of steel was considered a subcontractor within the meaning of this section, so as to permit a company who contracted with this subcontractor to provide raw steel to recover against the prime contractor's payment bond. *LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc.*, 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985).

Where all equipment had been delivered on or before February 28, 1981, and final payment was due no later than June 28, 1981, suit could not be filed after June 28, 1982; therefore, complaint filed on September 2, 1982, was untimely. *Eimco Div. v. United Pac. Ins. Co.*, 109 Idaho 762, 710 P.2d 672 (Ct. App. 1985).

Substantial Consumption.

This section does not require a showing of substantial consumption. *Weippe ex rel. Les Schwab Tire Centers of Idaho, Inc. v. Yarno*, 96 Idaho 319, 528 P.2d 201 (1974).

Cited in: *Oldcastle Precast, Inc. v. Parktowne Constr., Inc.*, 142 Idaho 376, 128 P.3d 913 (2005).

54-1928. Liability of public body for failure to obtain payment bond. — Any public body subject to this act which shall fail or neglect to obtain the delivery of the payment bond as required by this act, shall, upon demand, itself promptly make payment to all persons who have supplied materials or performed labor in the prosecution of the work under the contract, and any such creditor shall have a direct right of action upon his account against such public body in any court having jurisdiction in any county in which the contract was to be performed and executed which action shall be commenced within one (1) year after the furnishing of materials or labor.

History.

1965, ch. 28, § 4, p. 43.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch. 28, which is compiled as §§ 54-1925, 54-1926, and 54-1927 to 54-1930.

JUDICIAL DECISIONS

Cited in: H-K Contractors v. City of Firth, 101 Idaho 224, 611 P.2d 1009 (1979).

54-1929. Attorney's fees allowed. — In any action brought upon either of the bonds provided herein, or against the public body failing to obtain the delivery of the payment bond, the prevailing party, upon each separate cause of action, shall recover a reasonable attorney's fee to be taxed as costs.

History.

1965, ch. 28, § 5, p. 43.

JUDICIAL DECISIONS**ANALYSIS****Appeals.**

Contractor's bond action.

Criteria.

Reversible error.

Right to attorney's fees.

Appeals.

This section does not authorize an award of attorney fees on appeal. *LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc.*, 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985).

Section 45-513 has been construed to exclude appeals, and by parity of reasoning, general contractor's surety was denied attorney's fees on appeal pursuant to this section. *Eimco Div. v. United Pac. Ins. Co.*, 109 Idaho 762, 710 P.2d 672 (Ct. App. 1985).

Sub-subcontractor was entitled to an award of attorney fees under § 54-1927 because it was the prevailing party on appeal; there is nothing indicating that the Idaho legislature intended to limit awards of attorney fees under this section to the trial court. *Evco Sound & Elecs., Inc. v. Seaboard Sur. Co.*, 148 Idaho 357, 223 P.3d 740 (2009).

Contractor's Bond Action.

In an action on a contractor's bond, attorney's fees are merely an incident of the judgment and would not be a separate cause of action. *Weippe v. Yarno*, 94 Idaho 257, 486 P.2d 268 (1971).

Trial court properly declined to award the subcontractor its attorney fees after success-

fully defending against the contractor's breach of contract counterclaim because attorney fees incurred by the subcontractor after it had been paid in full by the insurer were not incurred in an action under the performance bond. *Oldcastle Precast, Inc. v. Parktowne Constr., Inc.*, 142 Idaho 376, 128 P.3d 913 (2005).

Criteria.

The trial judge, who is in a position to assess the complexity of the case, time involved, the volume of pleadings, etc., may make a determination of reasonable attorney's fees without requiring formal proof. *Interform Co. v. Mitchell*, 575 F.2d 1270 (9th Cir. 1978).

Reversible Error.

The failure of the trial judge to grant attorney's fees is reversible error. *Interform Co. v. Mitchell*, 575 F.2d 1270 (9th Cir. 1978).

Right to Attorney's Fees.

Where the supplier was entitled to sue on the payment bond under § 54-1927, it follows that he was entitled to attorney's fees under this section. *Interform Co. v. Mitchell*, 575 F.2d 1270 (9th Cir. 1978).

Cited in: Weippe ex rel. Les Schwab Tire Centers of Idaho, Inc. v. Yarno, 96 Idaho 319, 528 P.2d 201 (1974); Consolidated Supply Co. v. Babbitt, 96 Idaho 636, 534 P.2d 466 (1975);

Consolidated Concrete Co. v. Empire W. Constr. Co., 100 Idaho 234, 596 P.2d 106 (1979).

54-1930. Meaning of terms used in act. — The terms “person” and “claimant” and the masculine pronoun as used in this act shall include individuals, associations, copartnerships, or corporations.

History.

1965, ch. 28, § 6, p. 43.

STATUTORY NOTES

Compiler's Notes.

The words “this act” refer to S.L. 1965, ch. 28, which is compiled as §§ 54-1925, 54-1926, and 54-1927 to 54-1930.

Effective Dates.

Section 8 of S.L. 1965, ch. 28 declared an emergency. Approved February 17, 1965.

CHAPTER 20

IDAHO REAL ESTATE LICENSE LAW

SECTION.

- 54-2001. Short title.
- 54-2002. Licensure required.
- 54-2003. Exceptions to licensure — Active licensees — Transactions involving personal property.
- 54-2004. Definitions.
- 54-2005. The Idaho real estate commission.
- 54-2006. Qualifications of commissioners, term and organization.
- 54-2007. Compensation, powers and duties of commission.
- 54-2008. Establishment of Idaho real estate education council.
- 54-2009. Council appointment, qualifications and term.
- 54-2010. Compensation.
- 54-2011. Types of licenses.
- 54-2012. Minimum requirements for an individual primary Idaho license.
- 54-2013. Errors and omissions insurance.
- 54-2014. License exams.
- 54-2015. Individuals actively licensed in another state or jurisdiction seeking primary Idaho licensure.
- 54-2016. Primary Idaho licenses for legal business entities, sole proprietorships and branch offices — Additional requirements.
- 54-2017. [Repealed.]
- 54-2018. License renewals — Inactive license status — Personal changes — Effective dates — Fees nonrefundable.
- 54-2019. Denial of license applications.
- 54-2020. Fees.

SECTION.

- 54-2021. Disposition of funds.
- 54-2022. Real estate education — Prelicensure requirements.
- 54-2023. Continuing education requirements.
- 54-2024. Purpose of certification.
- 54-2025. Certification requirements.
- 54-2026. Certification of course providers.
- 54-2027. Duties and requirements of all certified course providers.
- 54-2028. Term of provider certification and renewal.
- 54-2029. Notice of potential expiration of certification.
- 54-2030. Expiration or withdrawal of provider certification — Notice to students.
- 54-2031. Withdrawal of Idaho certification for cause — Process.
- 54-2032. Certification of instructors.
- 54-2033. Instructor qualifications.
- 54-2034. Special consideration — Discretion of the commission.
- 54-2035. Term of instructor certification and renewal.
- 54-2036. Certification of courses and course content.
- 54-2037. Term of course certification and renewal.
- 54-2038. Designated broker — General responsibilities — Broker price opinions.
- 54-2039. Broker and branch office manager absences and changes.
- 54-2040. Main office or business location.
- 54-2041. Trust accounts and entrusted property.

SECTION.

- 54-2042. Creation of noninterest-bearing trust accounts — Requirements.
- 54-2043. Interest-bearing trust accounts.
- 54-2044. Trust account recordkeeping — Format of records required.
- 54-2045. Trust account deposits and receipt of consideration.
- 54-2046. Trust account disbursements.
- 54-2047. Disputed earnest money.
- 54-2048. Responsible broker for the transaction — Duties and recordkeeping.
- 54-2049. Record retention schedules.
- 54-2050. Brokerage representation agreements — Required elements.
- 54-2051. Offers to purchase.
- 54-2052. Electronically generated agreements.
- 54-2053. Advertising.
- 54-2054. Compensation, commissions and fees — Prohibited conduct.
- 54-2055. Licensees dealing with their own property.
- 54-2056. Terminating or changing licensed business relationships.
- 54-2057. Death or incapacity of a designated broker.
- 54-2058. Authority to investigate and discipline.
- 54-2059. Disciplinary powers — Revocation, suspension or other disciplinary action.
- 54-2060. Grounds for disciplinary action.
- 54-2061. Additional grounds for disciplinary action — Court actions — Licensee to report to commission.
- 54-2062. Additional grounds for disciplinary action — Other administrative actions — Licensee to report to commission.
- 54-2063. Disciplinary procedure and review of agency action.
- 54-2064. Proof of complaint — Prosecution by county prosecuting attorney.
- 54-2065. Penalty for acting as a broker or salesperson without license.
- 54-2066. Injunctive relief.
- 54-2067. Cease and desist orders.
- 54-2068. Witnesses — Depositions — Fees — Subpoenas.

SECTION.

- 54-2069. Real estate recovery fund established.
- 54-2070. Augmentation of fund.
- 54-2071. Recovery from fund — Procedure — Grounds — Amount — Hearing.
- 54-2072. Commission may answer petition — Compromise of claims.
- 54-2073. Court order requiring payment from recovery fund.
- 54-2074. Automatic suspension of broker's, associate broker's or salesperson's license on payment by commission — Condition for license reinstatement.
- 54-2075. Order of payment of claims if recovery fund balance insufficient — Interest.
- 54-2076. Commission's right to subrogation.
- 54-2077. Waiver of rights.
- 54-2078. Disciplinary action against licensees not restricted for violations of law or rules.
- 54-2079. Termination of sales associate for violation of disciplinary provisions — Statement to be filed with commission.
- 54-2080. Records — Disclosure to public.
- 54-2081. [Reserved.]
- 54-2082. Short title.
- 54-2083. Definitions.
- 54-2084. Brokerage agency relationships — Creation.
- 54-2085. Disclosure and writing requirements — Agency disclosure brochure and representation confirmation.
- 54-2086. Duties to a customer.
- 54-2087. Duties to a client.
- 54-2088. Limited dual agency and assigned agency permitted.
- 54-2089. Broker compensation.
- 54-2090. Written office policy required.
- 54-2091. Duration of agency relationship.
- 54-2092. Duties and obligations owed after termination of representation.
- 54-2093. Vicarious liability abolished.
- 54-2094. Representation not fiduciary in nature.
- 54-2095. Conflicts with other law.
- 54-2096. Severability.
- 54-2097. Rulemaking authority of the commission.

54-2001. Short title. — Sections 54-2001 through 54-2081, Idaho Code, shall be known and may be cited as "Idaho Real Estate License Law."

History.

I.C., § 54-2001, as added by 2000, ch. 285, § 3, p. 908.

STATUTORY NOTES

Prior Laws.

Former §§ 54-2001 through 54-2020, which comprised S.L. 1921, ch. 184, §§ 1 to 19, p. 378; am. 1925, ch. 108, § 1, p. 155; am. 1927, ch. 206, § 1, p. 289; I.C.A., §§ 53-2201 to 53-2219; am. 1933, ch. 42, § 1, p. 56; am. 1947, ch. 112, §§ 1 to 12, p. 249, were repealed by S.L. 1951, ch. 75, § 29.

The following sections were repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000:

Former § 54-2021, which comprised 1951, ch. 75, § 1, p. 117, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2022, which comprised 1951, ch. 75, § 2, p. 117; am. 1970, ch. 51, § 1, p. 103; am. 1976, ch. 64, § 1, p. 223; am. 1978, ch. 267, § 1, p. 597; am. 1981, ch. 45, § 1, p. 67; am. 1995, ch. 97, § 1, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2023, which comprised 1951, ch. 75, § 3, p. 117; am. 1970, ch. 51, § 2, p. 103; am. 1978, ch. 267, § 2, p. 597; am. 1989, ch. 40, § 1, p. 53; am. 1995, ch. 75, § 1, p. 196; am. 1995, ch. 97, § 2, p. 280, p. 117, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2024, which comprised 1951, ch. 75, § 4, p. 117; am. 1972, ch. 106, § 1, p. 217; am. 1978, ch. 267, § 3, p. 597; am. 1981, ch. 45, § 2, p. 67, p. 117, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2025, which comprised 1951, ch. 75, § 5, p. 117; am. 1967, ch. 122, § 1, p. 267; am. 1974, ch. 13, § 150, p. 138; am. 1976, ch. 64, § 2, p. 223, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2026, which comprised 1951, ch. 75, § 6, p. 117; am. 1955, ch. 238, § 1, p. 536; am. 1967, ch. 122, § 2, p. 267; am. 1976, ch. 64, § 3, p. 223; am. 1983, ch. 109, § 1, p. 230, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2027, which comprised 1951, ch. 75, § 7, p. 117; am. 1967, ch. 122, § 3, p. 267; am. 1974, ch. 13, § 151, p. 138; am. 1980, ch. 247, § 67, p. 582; am. 1995, ch. 97, § 3, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2028, which comprised 1951, ch. 75, § 8, p. 117; am. 1978, ch. 267, § 4, p. 597; am. 1995, ch. 75, § 2, p. 196, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2029, which comprised 1951, ch. 75, § 9, p. 117; am. 1959, ch. 204, § 1, p. 435; am. 1967, ch. 122, § 4, p. 267; am. 1969, ch. 322, § 1, p. 1017; am. 1970, ch. 51, § 3, p. 103; am. 1972, ch. 106, § 2, p. 217; am. 1974, ch. 108, § 1, p. 1248; am. 1975, ch. 234, § 1, p. 639; am. 1976, ch. 64, § 4, p. 223; am. 1978, ch. 267, § 5, p. 597; am. 1980, ch. 96, § 1, p.

207; am. 1981, ch. 96, § 1, p. 136; am. 1982, ch. 51, § 1, p. 75; am. 1983, ch. 109, § 2, p. 230; am. 1985, ch. 146, § 1, p. 390; am. 1987, ch. 193, § 1, p. 398; am. 1988, ch. 111, § 1, p. 199; am. 1988, ch. 243, § 1, p. 474; am. 1989, ch. 148, § 1, p. 354; am. 1991, ch. 18, § 1, p. 37; am. 1992, ch. 2, § 1, p. 4; am. 1995, ch. 75, § 3, p. 196; am. 1995, ch. 97, § 4, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2029A, as added by 1993, ch. 396, § 1, p. 1459, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2030, which comprised 1951, ch. 75, § 10, p. 117; am. 1967, ch. 122, § 5, p. 267; am. 1978, ch. 267, § 6, p. 597; am. 1995, ch. 75, § 4, p. 196, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2031, which comprised 1951, ch. 75, § 11, p. 117; am. 1967, ch. 122, § 6, p. 267; am. 1978, ch. 267, § 7, p. 597; am. 1982, ch. 51, § 2, p. 75; am. 1987, ch. 193, § 2, p. 398; am. 1995, ch. 97, § 5, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2032, which comprised 1951, ch. 75, § 12, p. 117; am. 1967, ch. 122, § 7, p. 267; am. 1978, ch. 267, § 8, p. 597; am. 1995, ch. 75, § 5, p. 196, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2033, which comprised S.L. 1951, ch. 75, § 13, p. 117 was repealed by S.L. 1978, ch. 267, § 9.

Former § 54-2033A, as added by 1972, ch. 106, § 3, p. 217; am. 1976, ch. 64, § 5, p. 223; am. 1978, ch. 267, § 10, p. 597; am. 1987, ch. 193, § 3, p. 398, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2034, which comprised 1951, ch. 75, § 14, p. 117; am. 1967, ch. 122, § 8, p. 267; am. 1972, ch. 106, § 4, p. 217; am. 1974, ch. 108, § 2, p. 1248; am. 1978, ch. 267, § 11, p. 597; am. 1995, ch. 97, § 6, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035, which comprised I.C., § 54-2035, as added by 1970, ch. 51, § 5, p. 103; am. 1980, ch. 96, § 2, p. 207; am. 1989, ch. 148, § 2, p. 354, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035A, as added by 1970, ch. 51, § 6, p. 103; am. 1976, ch. 63, § 1, p. 221; am. 1980, ch. 96, § 3, p. 207; am. 1989, ch. 148, § 3, p. 354, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035B, as added by 1970, ch. 51, § 7, p. 103; am. 1980, ch. 96, § 4, p. 207; am. 1985, ch. 228, § 1, p. 545, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035C, as added by 1970, ch. 51, § 8, p. 103; am. 1985, ch. 228, § 2, p. 545,

was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035D, as added by 1970, ch. 51, § 9, p. 103; am. 1985, ch. 228, § 3, p. 545, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035E, as added by 1970, ch. 51, § 10, p. 103; am. 1985, ch. 228, § 4, p. 545, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035F, as added by 1970, ch. 51, § 11, p. 103; am. 1985, ch. 228, § 5, p. 545, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035G, as added by 1970, ch. 51, § 12, p. 103; am. 1985, ch. 228, § 6, p. 545, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035H, as added by 1970, ch. 51, § 13, p. 103; am. 1985, ch. 228, § 7, p. 545, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035I, as added by 1970, ch. 51, § 15, p. 103; am. and redesign. 1985, ch. 228, § 7, p. 545; am. 1995, ch. 97, § 7, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2035J was amended and redesignated as § 54-2035I by § 7 of S.L. 1985, ch. 228.

Former § 54-2035K, as added by 1970, ch. 51, § 16, p. 103; am. 1976, ch. 63, § 2, p. 221, was repealed by S.L. 1980, ch. 96, § 5, effective March 19, 1980.

Former § 54-2036, which comprised 1951, ch. 75, § 16, p. 117; am. 1967, ch. 122, § 10, p. 267; am. 1976, ch. 64, § 6, p. 223; am. 1980, ch. 96, § 6, p. 207; am. 1983, ch. 109, § 3, p. 230; am. 1985, ch. 146, § 2, p. 390; am. 1988, ch. 243, § 2, p. 474, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2037, which comprised 1951, ch. 75, § 17, p. 117; am. 1967, ch. 122, § 11, p. 267; am. 1969, ch. 322, § 2, p. 1017; am. 1970, ch. 51, § 17, p. 103; am. 1980, ch. 96, § 7, p. 207; am. 1994, ch. 180, § 102, p. 420, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2038, which comprised 1951, ch. 75, § 18, p. 117; am. 1967, ch. 122, § 12, p. 267; am. 1978, ch. 267, § 12, p. 597; am. 1982, ch. 51, § 3, p. 75; am. 1995, ch. 97, § 8, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2039, which comprised 1951, ch. 75, § 19, p. 117; am. 1976, ch. 64, § 7, p. 223; am. 1994, ch. 330, § 1, p. 1060, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2040, which comprised 1951, ch. 75, § 20, p. 117; am. 1967, ch. 122, § 13, p. 267; am. 1970, ch. 51, § 18, p. 103; am. 1978, ch. 267, § 13, p. 597; am. 1987, ch. 193, § 4, p. 398; am. 1993, ch. 116, § 1, p. 292; am. 1995, ch. 73, § 1, p. 192; am. 1995, ch. 75, § 6, p.

196; am. 1995, ch. 97, § 9, p. 280; am. 1998, ch. 162, § 1, p. 549; am. 1999, ch. 54, § 4, p. 136, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2041, which comprised I.C., § 54-2041, as added by 1970, ch. 51, § 20, p. 103, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2042, which comprised I.C., § 54-2042, as added by 1970, ch. 51, § 22, p. 103; am. 1993, ch. 216, § 74, p. 587, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2043, which comprised 1951, ch. 75, § 23, p. 117; am. 1967, ch. 122, § 16, p. 267, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2044, which comprised 1951, ch. 75, § 24, p. 117; am. 1978, ch. 267, § 14, p. 597; am. 1995, ch. 75, § 7, p. 196, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2045, which comprised 1951, ch. 75, § 25, p. 117; am. 1978, ch. 267, § 15, p. 597; am. 1995, ch. 75, § 8, p. 196, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2046, which comprised 1951, ch. 75, § 26, p. 117; am. 1967, ch. 122, § 17, p. 267, was repealed by S.L. 1983, ch. 109, § 4.

Former § 54-2047, which comprised 1951, ch. 75, § 27, p. 117; am. 1967, ch. 122, § 18, p. 267; am. 1978, ch. 267, § 16, p. 597, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2048, which comprised 1951, ch. 75, § 28, p. 117; am. 1967, ch. 122, § 19, p. 267, was repealed by S.L. 2000, ch. 285, § 1 and S.L. 2000, ch. 469, § 126, both effective July 1, 2000.

Former § 54-2049, which comprised I.C., § 54-2049, as added by 1959, ch. 205, § 1, p. 436; am. 1989, ch. 42, § 1, p. 55; am. 1995, ch. 97, § 10, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2050, which comprised I.C., § 54-2050, as added by 1959, ch. 205, § 2, p. 436; am. 1967, ch. 122, § 20, p. 267; am. 1995, ch. 97, § 11, p. 280, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2051, which comprised I.C., § 54-2051, as added by 1970, ch. 51, § 23, p. 103, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2052, which comprised I.C., § 54-2052, as added by 1978, ch. 267, § 17, p. 597; am. 1990, ch. 213, § 81, p. 480, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

Former § 54-2053, which comprised I.C., § 54-2053, as added by 1978, ch. 267, § 18, p. 597; am. 1983, ch. 109, § 5, p. 230, was repealed by S.L. 2000, ch. 285, § 1, effective July 1, 2000.

54-2002. Licensure required. — No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefore [therefor]. Unless exempted from this chapter, any single act described within the definitions of “real estate broker” or “real estate salesperson” shall be sufficient to constitute “engaging in the business” within the meaning of this chapter. Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho real estate commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

History.

I.C., § 54-2002, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Prior Laws.

Former § 54-2002 was repealed. See Prior Laws, § 54-2001.

first sentence was added by the compiler to supply the probable intended word.

Compiler's Notes.

The bracketed insertion at the end of the

JUDICIAL DECISIONS

ANALYSIS

Applicability.

Real estate developers.

Written agreement.

Applicability.

State licensing statutes provide penalties for acting in the capacity of a broker or salesperson without a license; but, the statutes fail to evidence an intent on the part of the state legislature to void real estate development contracts which may be in contravention of their terms. *Gugino v. Kastera, LLC* (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

Real Estate Developers.

Where a real estate developer agreed to persuade land owners to sell their undeveloped property to a second developer as part of a joint development agreement, no license was required of the first developer under this section or § 54-2065, because the two devel-

opers were acting in concert under a joint venture, an exception to the license requirement in § 54-2003(1)(b). *Gugino v. Kastera, LLC* (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

Written Agreement.

When read together, this section and §§ 54-2004, 54-2050, 54-2084, and 54-2087 clearly indicate that any person who undertakes, for expected compensation, to represent another by directly or indirectly taking part in procuring prospects, or negotiating a transaction, to purchase real property has no enforceable agreement unless the agreement is in writing. *Johnson v. McPhee*, 147 Idaho 455, 210 P.3d 563 (Ct. App. 2009).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Correction of complaint.

Foreign contracts.

Information.

Licenses matters of public record.
Retention of commission.

Correction of Complaint.

Error, if any, in striking word "feloniously" from a complaint, charging attempt to act as a broker, and correcting the complaint to show person swearing thereto, is not reversible, no prejudice being shown. *State v. Johnson*, 54 Idaho 431, 32 P.2d 1023 (1934).

Foreign Contracts.

This section does not apply where all the transactions of a real estate sale and the contract with the broker were made in another state. *McGillivray v. Cronrath*, 48 Idaho 97, 279 P. 613 (1929).

Information.

Where date of commencement of prosecution for acting as a real estate salesman without license was shown by official records of court and was within period of limitations, such fact was not an issuable fact to be tried

in the case and if information had contained allegation that complaint was filed within one year after offense it would constitute pure surplusage and, therefore, demurrer to information for failure to so allege should have been overruled. *State v. Morris*, 81 Idaho 267, 340 P.2d 447 (1959).

Licenses Matters of Public Record.

Licenses of real estate brokers are matters of public record, and a denial upon information and belief is not permitted, since the public record is easily accessible. *Petersen v. Swanson*, 51 Idaho 49, 1 P.2d 630 (1931).

Retention of Commission.

Where real estate broker, not licensed under this chapter, retains commission fairly earned in good faith, he is under no quasi contractual obligation to return it. *McShane v. Quillin*, 47 Idaho 542, 277 P. 554 (1929).

54-2003. Exceptions to licensure — Active licensees — Transactions involving personal property. — (1) Exceptions to licensure. Except as otherwise stated below, an Idaho real estate license is not required for the following:

- (a) The purchase, option, exchange or sale of any interest in real property, or business opportunity for a person's own account or use;
 - (b) The acquisition, exchange or other disposition of any interest in real property or business opportunity by its owner or a regular employee of the owner, acting within the scope of his or her employment;
 - (c) The sale, exchange, purchase or other disposition of any interest in real property or business opportunity by a duly authorized attorney in fact whose power of attorney is granted for the purpose of consummating a single transaction involving the conveyance of a single or undivided interest in a parcel of real property or in a business opportunity;
 - (d) The acquisition or other disposition of any interest in real property or business opportunity by the following parties only if such acquisition or disposition is undertaken in the performance of their duties as:
 - (i) A receiver, trustee in bankruptcy, legal guardian or conservator;
 - (ii) An administrator, executor or personal representative of an estate;
 - (iii) Any person selling pursuant to the default provisions of a deed of trust, or any duly authorized agent thereof.
 - (e) The acquisition or other disposition of any interest in real property or business opportunity by an attorney at law in connection with client representation, and if the attorney is not regularly engaged in the conduct or business of real estate broker or salesperson.
- (2) Active real estate licensees. An actively licensed real estate broker, associate broker or salesperson must comply with this chapter, regardless of whether the licensee otherwise qualifies for any of the exceptions of subsection (1) of this section.
- (3) Transactions involving personal property. An active licensee who,

while acting on behalf of another, for compensation or for a promise or expectation of compensation, sells, lists, buys or negotiates, or offers to sell, list, buy or negotiate, the purchase or sale of a mobile home, manufactured home or floating home as defined by Idaho law, shall comply with this chapter regardless of whether such activity would otherwise require an Idaho real estate license.

(4) Exceptions to licensure shall not be used in any way to evade the purposes of this chapter. Any such attempt to evade this chapter shall be considered the unlicensed and unlawful practice of real estate.

History.

I.C., § 54-2003, as added by 2000, ch. 285,
§ 3, p. 908; am. 2003, ch. 65, § 1, p. 211.

STATUTORY NOTES

Prior Laws.

Former § 54-2003 was repealed. See Prior Laws, § 54-2001.

JUDICIAL DECISIONS

Joint Venture Exception.

Where a real estate developer agreed to persuade land owners to sell their undeveloped property to a second developer as part of a joint development agreement, no license was required of the first developer under

§ 54-2002 or § 54-2065, because the two developers were acting in concert under a joint venture, an exception to the license requirement in § 54-2003(1)(b). *Gugino v. Kastera, LLC* (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Brokers, § 10 et seq.

C.J.S. — 12 C.J.S., Brokers, §§ 13 et seq. and 41 et seq.

54-2004. Definitions. — As used in this chapter:

(1) “Accredited college or university” means an institution accredited by the regional accrediting associations, as reported in the most current publication of the accredited institutions of postsecondary education.

(2) “Acting in this state” means and includes dealing with any interest in real property, or a business opportunity involving an interest in real property, that is situated in the state of Idaho, or conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

(3) “Active license” means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(4) “Associate broker” means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (35) of this section.

(5) “Branch office” means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(6) “Broker price opinion” means a written price opinion of the estimated

price for identified real property prepared or rendered by an actively licensed broker or associate broker, for a purpose other than a prospective listing or sale, and that complies or purports to comply with the requirements and content provision of section 54-4105, Idaho Code.

(7) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(8) "Brokerage representation agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(9) "Business conduct and office operations course" means, in reference to a real estate course offering, the component of the advanced real estate course that is required in order to obtain a broker license and that teaches business practices and office operations of the brokerage, including recordkeeping, trust account procedures and the laws governing those practices.

(10) "Business day" means and includes each day of the week except Saturday, Sunday or any other legal holiday enumerated in section 73-108, Idaho Code.

(11) "Business name" means the name in which the brokerage company is licensed by the commission.

(12) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(13) "Commission" means the Idaho real estate commission, unless the context clearly indicates a different meaning.

(14) "Commission core course" means, in reference to a real estate course offering, the course containing curriculum, identified by the commission, that stresses current trends in real estate practices and changes in laws in real estate related industries. A core course must contain no more than four (4) classroom hours of instruction.

(15) "Continuing education elective course" means a real estate course offering, other than the commission core course for which continuing education credit hours may be obtained as provided in section 54-2023, Idaho Code.

(16) "Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

(17) "Cooperative sale" means a transaction involving two (2) or more brokers.

(18) "Council" means the Idaho real estate education council.

(19) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any

interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

(20) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(21) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are separated by both distance and time.

(22) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sales price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

(23) "Executive director" means the executive director of the Idaho real estate commission.

(24) "Expired license" means the status of a license when the license period has expired and the license is not renewed or provisional license granted, and before the license is terminated.

(25) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

(26) "Inactive license" means the status of a license that is not expired, terminated, suspended or revoked, and during which inactive period the license holder is not authorized to act as or associate with a designated broker.

(27) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(28) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(29) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(30) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility, or, if separated by distance, the instructor and student are connected by contemporaneous, two-way audio and visual communication.

(31) "Main office" means the principal location where the real estate broker is licensed to transact business.

(32) "Person" means and includes an individual, or any legal business entity.

(33) "Primary Idaho license" means an Idaho real estate license that is not contingent upon continuance of a license in another state or jurisdiction.

(34) "Provisional license" means an extension of the period of active licensure, beyond the licensee's expiration date, granted by the commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for any other purpose allowed by this chapter.

(35) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others;

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;

(e) A dealer in options as defined in this section.

(36) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (35) of this section.

(37) "Real estate settlement procedures act" means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 2008.

(38) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(39) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(40) "Revoked license" means a license that has been permanently revoked by the issuing authority.

(41) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

(42) "State or jurisdiction" means and includes any of the fifty (50) states and any foreign jurisdiction that issue real estate licenses substantially similar to those provided for in this chapter.

(43) "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee

seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved final examination.

(44) "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

(45) "Suspended license" means a license that has been temporarily suspended by the issuing authority.

History.

I.C., § 54-2004, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 1, p. 417; am. 2002, ch. 220, § 1, p. 605; am. 2002, ch. 280, § 1, p. 817; am. 2003, ch. 16, § 14, p. 48; am.

2005, ch. 107, § 1, p. 334; am. 2006, ch. 166, § 1, p. 501; am. 2007, ch. 98, § 1, p. 283; am. 2008, ch. 144, § 1, p. 425; am. 2011, ch. 108, § 1, p. 275.

STATUTORY NOTES

Prior Laws.

Former § 54-2004 was repealed. See Prior Laws, § 54-2001.

Amendments.

This section was amended by two 2002 acts — ch. 220, § 1 and ch. 280, § 1, both effective July 1, 2002, which appear to be compatible and have been compiled together.

The 2002 amendment, by ch. 220, added the definitions of "active license," "expired license," "inactive license," "real estate settlement procedures act," "revoked license," and "surrendered license," redesignated subsequent subsections accordingly, and rewrote the definitions of "business name" and "suspended license."

The 2002 amendment, by ch. 280, added the definition of "core course" and redesignated the subsequent subsections accordingly.

The 2006 amendment, by ch. 166, substituted "subsection (32)" for "subsection (31)" in subsection (4); deleted former subsection (5), which read: "'Brokerage agreement' means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction"; redesignated former subsection (6) as (5); added present subsections (6) and (7); redesignated former subsections (7) to (33) as (8) to (34); substituted "subsection (32)" for "subsection (31)" in present subsection (33); and deleted former subsection 34, which read: "'Reciprocal license' means an

Idaho real estate license that is issued pursuant to the terms of a specific, written reciprocal agreement between Idaho and another state or jurisdiction, and that is contingent upon the licensee's maintaining a license in the other state or jurisdiction."

The 2007 amendment, by ch. 98, in subsection (18), substituted "by both distance and time" for "by distance or time"; in subsection (27), added the language beginning "or, if separated by distance"; and in subsection (34), substituted "January 1, 2007" for "January 1, 2005."

The 2008 amendment, by ch. 144, updated the internal references in subsections (3) and (34); added subsection (8) and redesignated the subsequent subsections accordingly; and in subsection (35), substituted "January 1, 2008" for "January 1, 2007."

The 2011 amendment, by ch. 108, added subsections (2) and (6) and redesignated the subsequent subsections accordingly.

Compiler's Notes.

The accredited institutions of postsecondary education, referred to in subsection (1), is a guide to institutions of higher learning that are accredited by regional, faith-based, and private career accrediting organizations published by the American council on education. See <http://www.acenet.edu>.

Effective Dates.

Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

JUDICIAL DECISIONS

Written Agreement.

When read together, this section and §§ 54-2002, 54-2050, 54-2084, and 54-2087 clearly indicate that any person who undertakes, for

expected compensation, to represent another by directly or indirectly taking part in procuring prospects, or negotiating a transaction, to purchase real property has no enforceable

agreement unless the agreement is in writing.
Johnson v. McPhee, 147 Idaho 455, 210 P.3d 563 (Ct. App. 2009).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application of chapter.
 Attempt as punishable.
 Broker liable on licensees' bond.
 Buying and selling land.
 Compensation necessary.
 Exempt agreements.
 Supervision of salesmen.

Application of Chapter.

Where contract is made and performed and commission earned in another state, statute does not apply, although the property sold is situated in this state. *McGillivray v. Cronrath*, 48 Idaho 97, 279 P. 613 (1929).

Attempt as Punishable.

If only attempt is shown, a conviction of attempting to act as unlicensed realty broker is proper. *State v. Johnson*, 54 Idaho 431, 32 P.2d 1023 (1934).

Broker Liable on Licensees' Bond.

Partner real estate brokers could not escape liability under bond conditional on licensees' conducting business without fraud or fraudulent representations merely by taking deed to owner's property, prior to the issuance of a real estate broker's license. They acted for others and were within the purview defining real estate brokers. *Kallash v. Claar*, 48 Idaho 714, 284 P. 1032 (1930).

Buying and Selling Land.

One who contracted to sell realty which he did not own, and who later bought it, at a price to allow profit in filling contract, acted as a real estate broker. *Goody v. Maryland Cas. Co.*, 53 Idaho 523, 25 P.2d 1045 (1933).

Compensation Necessary.

One is not guilty of attempting to act as a

real estate broker unless acting for compensation or promise thereof. *State v. Johnson*, 54 Idaho 431, 32 P.2d 1023 (1934).

Exempt Agreements.

An agreement entered into between persons owning realty on which a first mortgage had been foreclosed on the last day of the redemption period and person holding junior lien that latter would redeem realty and persons would then find a buyer for such realty, they to be given as consideration for their services three parcels of land, did not come within the prohibitions of the real estate brokers act since on the date of such agreement such persons while not holding title had a redemptive interest in such property and its disposition. *Harvey v. Brown*, 80 Idaho 379, 330 P.2d 982 (1958).

Supervision of Salesmen.

Real estate brokers and real estate salesmen are engaged in separate professions; insofar as the broker himself is responsible for protecting the public from misconduct by the salesmen who represent him, the broker exercises that responsibility by supervising the results rather than the detailed performance of the work. *Department of Emp. v. Bake Young Realty*, 98 Idaho 182, 560 P.2d 504 (1977).

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Brokers, § 1.

C.J.S. — 12 C.J.S., Brokers, § 1.

54-2005. The Idaho real estate commission. — There is hereby created in the department of self-governing agencies the Idaho real estate commission, for the purpose of administering this chapter. The commission shall consist of four (4) members appointed by the governor as follows: one (1) from the northern district consisting of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner counties; one (1) from the southeastern district consisting of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou,

Bear Lake, Franklin, Oneida, Power and Bannock counties; one (1) from the southwestern district consisting of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley counties; and one (1) from the south central district consisting of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties.

History.

I.C., § 54-2005, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Cross References.**

Department of self-governing agencies,
§ 67-2601 et seq.

Prior Laws.

Former § 54-2005 was repealed. See Prior
Laws, § 54-2001.

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Brokers, § 8 et
seq.

54-2006. Qualifications of commissioners, term and organization. — (1) Each member of the commission shall be an actively licensed Idaho designated real estate broker or associate broker who has had at least five (5) years active license experience as a designated broker or associate broker in the real estate business in Idaho.

(2) Each regular appointment, other than an appointment to fill an unexpired term, shall commence on July 1 of the year of appointment and be for a term of four (4) years. Each commissioner shall hold office until a qualified successor is appointed. Upon the death, resignation or removal of any member of the commission, the governor shall appoint a qualified licensed real estate broker or associate broker to fill out the unexpired term. The governor may remove any member from the commission for neglect of duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

Each year, within thirty (30) days after the appointment of the members of the commission, the commission shall call a meeting and elect a chair, a vice chair, and a commissioner to serve on the Idaho real estate education council. Thereafter the chair may call meetings of the commission whenever he or she deems it advisable, but if the chair refuses to call a meeting upon written demand of the other three (3) members of the commission, then such members may call the meeting.

(3) The commission may hire an executive director and such other assistants as it may require from either within or without the commission, and shall pay these persons a compensation as determined by the commission. The position of executive director shall be a nonclassified state employee, and such person shall be an at-will employee of the commission.

History.

I.C., § 54-2006, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2006 was repealed. See Prior Laws, § 54-2001.

54-2007. Compensation, powers and duties of commission. — Members shall be compensated as provided by section 59-509(n), Idaho Code. The commission is charged with administering and enforcing all provisions of this chapter, and is expressly vested with the power and authority to make and enforce any and all reasonable rules as it deems necessary for administering and enforcing this chapter.

History.

I.C., § 54-2007, as added by 2000, ch. 285, § 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2007 was repealed. See Prior Laws, § 54-2001.

54-2008. Establishment of Idaho real estate education council. — An education council consisting of six (6) members, four (4) of whom are to be appointed by the Idaho real estate commission, plus one (1) commissioner and the commission's executive director, may be established to act as an advisory group to the commission, and to perform functions as set forth in this chapter and in the council's bylaws, which bylaws must be approved by the commission. The council shall recommend to the commission real estate education policy and course content quality for all education courses approved by the commission as meeting the education requirements of this chapter and its rules, and for such other courses or clinics deemed advisable by the commission for promoting higher standards of practice in the real estate business. The council will prepare for approval by the commission any additional recommended procedures or guidelines for certifying educational courses, instructors and providers.

History.

I.C., § 54-2008, as added by 2000, ch. 285, § 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2008 was repealed. See Prior Laws, § 54-2001.

54-2009. Council appointment, qualifications and term. — One (1) member of the council shall be named from each of the four (4) geographic districts of the state: north, south, east and west. The education director of the commission shall serve as the council executive at all council meetings and functions. Each education council member shall be appointed for a term

of four (4) years. The commission may remove any council member for neglect of duty, for incompetency, or for unprofessional, dishonorable or any other conduct which the commission believes interferes with that person's ability to properly act or serve as a council member.

History.

I.C., § 54-2009, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2009 was repealed. See Prior
Laws, § 54-2001.

54-2010. Compensation. — Members of the education council are not employees of the state of Idaho, but shall be reimbursed expenses in the same manner as state employees in addition to a per diem allowance in the same amount as that received by the commissioners for each day of approved service.

History.

I.C., § 54-2010, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2010 was repealed. See Prior
Laws, § 54-2001.

54-2011. Types of licenses. — The commission may issue a primary Idaho real estate license to any individual, sole proprietorship or legal business entity in accordance with the requirements of this chapter. An individual may be licensed as a real estate salesperson, an associate broker or a designated broker acting for a sole proprietorship or legal business entity.

History.

I.C., § 54-2011, as added by 2000, ch. 285,
§ 3, p. 908; am. 2010, ch. 213, § 1, p. 462.

STATUTORY NOTES**Prior Laws.**

Former § 54-2011 was repealed. See Prior
Laws, § 54-2001.

“or reciprocal” following “primary” in the first sentence.

Amendments.

The 2010 amendment, by ch. 213, deleted

54-2012. Minimum requirements for an individual primary Idaho license. — (1) Requirements for all individual primary licenses. Unless a qualification is waived or modified by the commission for good cause and upon special consideration, and except as provided in section

54-2015, Idaho Code, each person seeking a primary Idaho real estate license as a salesperson, associate broker or designated broker shall meet all of the following minimum qualifications:

- (a) Be an individual;
- (b) Be eighteen (18) years of age or older;
- (c) Furnish satisfactory proof that the applicant graduated from an accredited high school or its equivalent or holds a certificate of general education;
- (d) Not have had a real estate or other professional or occupational license suspended or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the commission;
- (e) Not have had a real estate or other professional or occupational license revoked for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction; provided that, after a period of five (5) years from the date the license was revoked, the applicant may make a written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:

- (i) The exemption review shall consist of a review of any documents relating to the disciplinary action that resulted in the license revocation and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

- (ii) During the review, the commission shall consider the following factors and evidence:

1. The severity or nature of the disciplinary violation for which the applicant's license was revoked;
2. The period of time that has passed since the disciplinary violation occurred;
3. The existence, number and pattern of any other misconduct for which the applicant has been disciplined;
4. The circumstances surrounding the disciplinary violation that would help the commission determine the risk of repetition;
5. The relationship of the disciplinary violation to the licensed practice of real estate; and
6. The applicant's activities since the disciplinary violation under review, such as employment, education, participation in treatment, payment of restitution or any other factors that may be evidence of current rehabilitation.

- (iii) The applicant shall bear the burden of establishing his current suitability for licensure.

- (f) Not have been convicted or completed any sentence of confinement for or on account of any misdemeanor involving fraud, misrepresentation or dishonest or dishonorable dealing, in a state or federal court, within five

- (5) years immediately prior to the date the application for license is submitted to the commission;
- (g) Not have been convicted of any felony in a state or federal court or convicted by military general court-martial; provided that, after a period of five (5) years from the date the person was convicted or completed any term of probation, sentence or confinement or period of parole, whichever is later, the applicant may make written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:
- (i) The exemption review shall consist of a review of any documents relating to the felony and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.
 - (ii) During the review, the commission shall consider the following factors or evidence:
 - 1. The severity or nature of the felony;
 - 2. The period of time that has passed since the felony under review;
 - 3. The number or pattern of felonies or other similar incidents;
 - 4. The circumstances surrounding the crime that would help determine the risk of repetition;
 - 5. The relationship of the crime to the licensed practice of real estate; and
 - 6. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution or any other factors that may be evidence of current rehabilitation.
 - (iii) The applicant shall bear the burden of establishing his current suitability for licensure.
- (h) Complete all prelicense education requirements as provided for in section 54-2022, Idaho Code, for a salesperson's or broker's license;
- (i) Pass the commission-approved real estate licensing exam for a sales or broker license in the time and manner stated in section 54-2014, Idaho Code, and pay the required exam fees;
- (j) Be fingerprinted for the purpose of a national criminal history check to determine whether the applicant is qualified for licensure and pay all fees associated with the fingerprinting and background check services. If the fingerprints are returned to the commission as illegible the applicant shall, upon request from the commission, be fingerprinted again and file the new fingerprints with the commission;
- (k) Sign and file with the commission an irrevocable consent to service, appointing the commission's executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the executive director shall immediately mail a copy of the same by certified

mail to the last known address of the licensee. All licensees shall provide the commission a full and current mailing address and shall notify the commission in writing of any change in mailing address within ten (10) business days of the change;

(l) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker, provide the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time;

(m) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(n) Provide satisfactory proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application. Such evidence shall demonstrate the productiveness of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification.

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the applicant during two (2) or more years within the last five (5) years of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant has been associated, provided however, that upon preapproval by the commission, the applicant may verify that the report is correct in an alternative manner;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall deem advisable;

(b) Designate a physical office location and a business name. The commission may refuse to issue a license to any person if the business name is the same as that of any person whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. However, nothing in this

paragraph shall restrict an individual from obtaining a license in his or her own legal name.

(c) If currently licensed in Idaho as a salesperson and applying for a license as an Idaho broker or associate broker, the individual shall submit a new fingerprint card for processing and pay associated fees.

History.

I.C., § 54-2012, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 2, p. 417; am. 2002, ch. 220, § 2, p. 605; am. 2003, ch. 66,

§ 1, p. 220; am. 2005, ch. 107, § 2, p. 334; am. 2010, ch. 212, § 1, p. 456; am. 2012, ch. 76, § 1, p. 219.

STATUTORY NOTES**Prior Laws.**

Former § 54-2012 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2010 amendment, by ch. 212, added paragraph (1)(e) and redesignated the subse-

quent paragraphs in subsection (1); and, in the introductory paragraph in paragraph (1)(g), inserted "or convicted by military general court-martial".

The 2012 amendment, by ch. 76, deleted "revoked" preceding "suspended or surrendered" in paragraph (1)(d).

54-2013. Errors and omissions insurance. — (1) Each licensee who is actively licensed under this chapter shall, as a condition to licensing, carry and maintain errors and omissions insurance to cover all licensed activities under the provisions of this chapter.

(2) The commission shall make the insurance required under the provisions of this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with chapter 57, title 67, Idaho Code. The exact premium shall be set by the commission by motion.

(3) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee.

(4) Each licensee shall have the option of obtaining errors and omissions insurance independently if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(5) The commission shall determine the terms and conditions of coverage required under the provisions of this section including, but not limited to, the minimum limits of coverage, the permissible deductible and the permissible exemptions.

(6) A licensee seeking to obtain or renew an active license shall certify to the commission that he is in compliance with the insurance requirements of this section. A licensee who elects not to participate in the insurance program administered by the commission shall obtain a certificate of coverage, signed by an authorized agent or employee of the insurance carrier, reflecting proof of insurance meeting the requirements established by the commission. Upon request by the commission the licensee shall produce the certificate for inspection. Requests for certificates shall be sent by first class mail to the licensee's business or residence address as reflected

by the commission's records and a copy of the request shall be sent to the licensee's designated broker, if any. A licensee failing to produce a certificate of coverage within thirty (30) days of a request to do so may have his license inactivated by the commission and shall not be entitled to reactivate the license unless and until he provides to the commission a certificate of coverage reflecting proof of insurance meeting the requirements of the commission. Nothing in this subsection shall limit the ability of the commission to investigate or discipline a licensee for failing to maintain insurance while on active status in violation of subsection (1) of this section or for violating any other section of chapter 20, title 54, Idaho Code, or any rule of the commission.

(7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, not to exceed two hundred fifty dollars (\$250) per year, per licensee, the requirement of insurance coverage as provided in this section shall be void during the applicable contract period.

(8) The commission is also specifically empowered to charge and collect an administrative fee in addition to the premium paid from each licensee who obtains errors and omissions insurance through the commission contract, which fee shall not exceed ten dollars (\$10.00) per licensee. This administrative fee shall be of an amount sufficient to raise that revenue required to administer the provisions of this section. The limit in subsection (7) of this section applies only to premium cost and not to any administrative fee charged.

History. I.C., § 54-2013, as added by 2000, ch. 285, § 3, p. 908; am. 2003, ch. 65, § 2, p. 211; am.	2005, ch. 106, § 1, p. 333; am. 2010, ch. 217, § 1, p. 485; am. 2012, ch. 74, § 1, p. 215.
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STATUTORY NOTES

Prior Laws. Former § 54-2013 was repealed. See Prior Laws, § 54-2001.	fourth through sixth sentences in subsection (6).
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Amendments. The 2010 amendment, by ch. 217, added the	The 2012 amendment, by ch. 74, substi- tuted "two hundred fifty dollars (\$250)" for "two hundred dollars (\$200)" in subsection (7).
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54-2014. License exams. — (1) Exam required. Unless a written certificate of waiver is obtained from the commission and submitted with the application, an individual applicant seeking a primary Idaho real estate license shall take and pass the national portion and the Idaho state portion of an approved exam administered by or through the commission. The license applicant shall take and pass the required portion or portions of the exam within no more than twelve (12) months immediately preceding the date of the license application.

(2) Registration for the exam and exam fee. An individual shall register for the exam in a manner authorized by the commission and shall pay at the time of registration the nonrefundable exam fee in an amount established by motion of the commission, not to exceed one hundred fifty dollars (\$150).

(3) Waiver of national portion of exam. An individual who has obtained a

written certificate from the commission waiving the national portion of the exam shall be required to take and pass the Idaho state portion of the exam only. The certificate of waiver and exam fee shall be submitted with the application for exam.

(4) Failure to appear for the exam or to pass the exam. An individual who fails to appear for the exam or to pass the exam may register to take another exam. The individual must register and submit a new exam fee.

(5) The commission shall establish, by motion, fees for the exam which, in its discretion, are sufficient to raise the revenue required to administer the exam. Fees so established shall remain effective from year to year and may be altered only upon motion by the commission.

History.

I.C., § 54-2014, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 3, p. 417; am.

2006, ch. 166, § 2, p. 501; am. 2012, ch. 87, § 1, p. 244.

STATUTORY NOTES

Prior Laws.

Former § 54-2014 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2006 amendment, by ch. 166, rewrote subsection (2), which formerly read: "Preregistration for the exam. An individual may preregister to sit and take the exam by submitting a completed preregistration exam application form and a nonrefundable exam fee in an amount established by motion of the commission, not to exceed one hundred dollars (\$100). The exam application and fee shall be submitted directly to the testing company administering the exam, or to the commission, as specified by the commission. Failure to appear for any reason for the exam shall cancel the exam application. A new exam application and fee shall be required to take the exam at a future time"; deleted former subsection (3), which read: "Walk-in

registration for the exam. An individual may appear at a testing center and take the exam without having preregistered so long as seating remains available at the center. The individual shall submit a completed exam application and a walk-in exam fee in an amount established by motion of the commission, not to exceed one hundred ten dollars (\$110), at the time the individual is admitted to take the exam"; redesignated former subsections (4) to (6) as (3) to (5); in present subsection (4), inserted "appear for the exam or to" in the first two sentences, and substituted "register" for "reapply" in the second sentence and substituted "complete a new exam application" for "register" in the last sentence; and deleted "proper" following "only upon" in present subsection (5).

The 2012 amendment, by ch. 87, substituted "one hundred fifty dollars (\$150)" for "one hundred dollars (\$100)" at the end of subsection (2).

54-2015. Individuals actively licensed in another state or jurisdiction seeking primary Idaho licensure. — (1) An individual who is currently and actively licensed as a real estate broker or salesperson in another state or jurisdiction at the time of application for a primary Idaho real estate license shall meet all qualifications listed in section 54-2012, Idaho Code, for the type of license sought, except that the applicant shall not be required to furnish proof of the educational prerequisites described in subsection (1)(h) of section 54-2012, Idaho Code; provided however, an individual applying to be licensed as a designated broker of a business entity or sole proprietorship, or as a branch office manager of a licensed branch office, shall comply with the requirements of section 54-2016, Idaho Code. In addition, such applicant shall provide a current, certified license history from the other licensing state or jurisdiction, which history shall indicate any disciplinary action taken against the applicant's license by the other

licensing state or jurisdiction, and the status and standing of the applicant's license in the other state or jurisdiction.

(2) An individual who holds an active license in good standing in another state or jurisdiction may, upon written request to the commission, obtain a certificate of waiver of the national portion of the exam required for Idaho licensure. A request for waiver shall indicate the individual's mailing address to which the commission is to deliver the certificate of waiver. The certificate of waiver shall be submitted with the application for exam as provided in subsection (3) of section 54-2014, Idaho Code.

(3) An individual who is currently and actively licensed in another state or jurisdiction that administers a real estate exam may be issued a primary Idaho license without further exam or proof of educational prerequisites pursuant to written agreement between Idaho and the other state or jurisdiction, provided that such other state or jurisdiction allows the issuance of real estate licenses in substantially the same manner as set forth in this subsection; provided however, an individual applying to be licensed as a designated broker of a business entity or sole proprietorship, or as a branch office manager of a licensed branch office, shall comply with the requirements of section 54-2016, Idaho Code, notwithstanding the terms of the agreement.

History.

I.C., § 54-2015, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 4, p. 417; am. 2002, ch. 220, § 3, p. 605; am. 2003, ch. 66,

§ 2, p. 220; am. 2005, ch. 105, § 1, p. 329; am. 2006, ch. 166, § 3, p. 501; am. 2010, ch. 212, § 2, p. 456.

STATUTORY NOTES

Prior Laws.

Former § 54-2015 was repealed. See Prior Laws, § 54-2001.

tuted "subsection (3)" for "subsection (4)" near the end of subsection (2).

The 2010 amendment, by ch. 212, in subsection (1), substituted "described in subsection (1)(h) of section 54-2012" for "described in subsection (1)(g) of section 54-2012."

Amendments.

The 2006 amendment, by ch. 166, substi-

54-2016. Primary Idaho licenses for legal business entities, sole proprietorships and branch offices — Additional requirements. —

(1) Legal business entities. Each legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed by the Idaho real estate commission to engage in the real estate business in Idaho and shall make proper application, pay all required fees and meet all requirements listed below.

- (a) Each legal business entity shall have a properly licensed individual designated broker who shall be held responsible for the activities of the licensed entity.
- (b) The individual designated broker shall, within three (3) years immediately prior to the designation, satisfactorily complete a commission-approved business conduct and office operations course.
- (c) The individual designated broker shall also hold the following legal position within the licensed entity:
 - (i) Corporation — an officer;
 - (ii) Partnership or limited partnership — a general partner;

(iii) Limited liability company — a member or manager.

The individual designated broker for any business entity shall have full authority to act on behalf of the licensed business entity and shall submit sufficient and satisfactory proof thereof with the application for license. Such proof shall include a list of the entity's officers, directors, members or managers, as reflected in the minutes, resolutions or other similar business documents of the entity. All acts of that individual as designated broker shall be considered acts of the licensed business entity. Nothing in this section is intended to create liability to a legal business entity for illegal or fraudulent acts by the individual broker performed solely on his own account.

(d) A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required above, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(e) One (1) individual may act as designated broker for more than one (1) licensed business entity, however, all entities shall have their main offices in the same physical location.

(f) Satisfactory proof of mandatory errors and omissions insurance shall be provided for both the individual designated broker and the licensed business entity.

(g) A legal business entity doing business under an assumed name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state.

(2) Sole proprietorships. An individual designated broker not licensed with a legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed as a sole proprietor. Each sole proprietorship seeking a real estate license shall meet all of the following requirements:

(a) A licensed sole proprietor doing business under an assumed business name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state;

(b) Satisfactory proof of mandatory errors and omissions insurance shall be provided for the licensed designated broker of a sole proprietorship;

(c) The individual designated broker shall have satisfactorily completed a commission-approved business conduct and office operations course within three (3) years immediately prior to the application for license.

(3) Multiple business names prohibited. A legal business entity or sole proprietorship shall be licensed under only one (1) business name.

(4) Branch offices. Each branch office in which trust funds and original transaction files are maintained shall be separately licensed in accordance with the following:

(a) The designated broker establishing the branch office shall submit an

application, along with the required fee for the issuance or renewal of the branch office license.

(b) The designated broker shall designate in the application a branch manager, who shall be an associate broker and who, within three (3) years immediately prior to the designation, shall have completed a commission-approved business conduct and office operations course, to regularly occupy and be responsible for the supervision of the branch office. When a branch manager is a regular full-time employee or is engaged in a full-time activity at a location other than the place he is licensed to do business, a presumption will be made that the branch manager is unable to responsibly supervise the branch; provided however, the presumption may be overcome by evidence to the contrary which the commission determines to be satisfactory.

(c) A branch manager shall not be licensed to manage more than one (1) branch office at a time.

(d) A license issued to a branch office is valid and in effect only as long as the license of the designated broker remains in active status.

(e) No separate branch office license or manager is required for business locations other than the main office unless trust funds or original transaction records are kept at the branch.

(f) If a separate real estate trust account is maintained for a branch office, all records and related files for that account shall be maintained at the branch office.

(g) Each branch office or business location, whether separately licensed or not, shall conduct business only in the licensed name of the legal entity or sole proprietor.

History.

I.C., § 54-2016, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 5, p. 417; am. 2002, ch. 220, § 4, p. 605; am. 2005, ch. 105,

§ 2, p. 329; am. 2005, ch. 107, § 3, p. 334; am. 2007, ch. 98, § 2, p. 283; am. 2008, ch. 142, § 1, p. 407; am. 2010, ch. 213, § 2, p. 462.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Prior Laws.

Former § 54-2016 was repealed. See Prior Laws, § 54-2001.

Amendments.

This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 105, § 2, in subsection (1), redesignated a portion of former paragraph (a) as present paragraph (c), added present paragraph (b), and redesignated former paragraphs (b) to (e) as (d) to (g); added paragraph (c) in subsection (2); and in subsection (4), rewrote paragraph (b), substituted "broker" for "individual" in paragraph (d), and added paragraph (h).

The 2005 amendment, by ch. 107, § 3,

added subsection (4)(h), which is identical to subsection (4)(h) added by S.L. 2005, ch. 105, § 2.

The 2007 amendment, by ch. 98, deleted the last sentence in subsection (4)(d), which formerly read: "The license certificate of the branch office shall be signed by the designated broker"; and deleted subsection (4)(h), which formerly read: "The current license certificates for the branch office, the branch manager, and for each sales associate conducting business from the branch office shall be prominently displayed or available for public inspection at the branch office."

The 2008 amendment, by ch. 142, in paragraphs (1)(b), (2)(c), and (4)(b), substituted "three (3) years" for "five (5) years."

The 2010 amendment, by ch. 213, deleted the second sentence in paragraph (4)(b), which formerly read: "Any salesperson acting

as a branch manager on July 1, 2005, shall have until July 1, 2006, to obtain an associate broker's license."

54-2017. Reciprocal Idaho licenses. [Repealed.]

STATUTORY NOTES

Prior Laws.

Another former § 54-2017 was repealed. See Prior Laws, § 54-2001.

2017, as added by 2000, ch. 285, § 3, p. 908; am. 2002, ch. 220, § 5, p. 605; am. 2003, ch. 66, § 3, p. 220, was repealed by S.L. 2005, ch. 105, § 3.

Compiler's Notes.

This section, which comprised I.C., § 54-

54-2018. License renewals — Inactive license status — Personal changes — Effective dates — Fees nonrefundable. — (1) Initial license period. Each new license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on the last day of the month of the birth date of the licensee. A salesperson licensed in this state who applies for and obtains a broker license shall retain the license renewal period and expiration date of his salesperson license. Corporations, partnerships, limited liability companies and other entities defined as "persons" in this chapter shall have established as the equivalent of a birth date, the birth date of its designated broker. Licensed branch offices shall have established as the equivalent of a birth date, the birth date of the designated broker for the branch office.

(2) License renewal. Each license shall be renewable for a period of two (2) years by timely submitting a completed application. Applications must be received at the commission office on or before 5 p.m. of the expiration date.

(a) If renewing an active license, the application shall include:

- (i) Certification that the applicant has met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code;
- (ii) Certification that the applicant has met the mandatory errors and omissions insurance requirement for real estate licensees as set forth in section 54-2013, Idaho Code; and
- (iii) Payment of all renewal fees established by this chapter or by the commission.

(b) If renewing an inactive license, the application shall include payment of all renewal fees established by this chapter or by the commission by rule.

(3) Late renewal. If the licensee fails to submit a completed application for renewal or pay the renewal fee on or before the expiration date, the commission may accept a later application or payment of the fee, subject to such conditions as the commission may require including, but not limited to, the assessment of a late fee; provided that between the license expiration date and the date of renewal of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful for any licensee to do or attempt to offer to do any of the acts of the

kind and nature described in the definitions of real estate broker or real estate salesperson in section 54-2004, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not renewed within one (1) year of the expiration date shall be automatically terminated by the commission and may not be renewed.

(4) Active and inactive license status. A licensee who is a designated broker or associated with a designated broker shall hold an active license. A licensee who has paid all applicable fees, who is not associated with a designated broker and who holds a current license that is not revoked, suspended or terminated shall hold his license on inactive status. A licensee seeking to change from active license status to inactive license status shall have the broker submit a change of status application to the commission in the form and manner approved by the commission. During the period that his license is inactive, the licensee shall not engage in the business or act in the capacity of real estate broker, associate broker or salesperson. However, an inactive licensee may receive a referral fee for any referral made during the period his license was active. A licensee may activate an inactive license by meeting each of the following:

- (a) If activating as a sales associate, associating with a designated Idaho broker and having the broker submit an application in the form and manner approved by the commission;
- (b) If activating as a designated broker, establishing an office in the manner required by this chapter and submitting an application in the form and manner approved by the commission;
- (c) Paying any required fees;
- (d) Obtaining and maintaining a policy of errors and omissions insurance as required by section 54-2013, Idaho Code, and in accordance with the rules of the commission and certifying the same; and
- (e) Successfully completing any continuing education requirements, as prescribed in section 54-2023, Idaho Code, and certifying the same for the current license period.

(5) Continuing education. A licensee shall not submit an application to renew a license on active status or to activate an inactive license without having obtained the continuing education credit hours required by section 54-2023, Idaho Code. A licensee who violates this subsection (5) shall be subject to disciplinary action by the commission.

(6) Time required. The commission may request satisfactory proof of continuing education compliance from any licensee who has certified to the commission that he has completed the requirement. The request shall state the time within which the proof must be received at the commission office, which time shall not be less than ten (10) business days.

(7) Satisfactory proof. Upon request from the commission, the licensee shall submit satisfactory proof of having met the continuing education requirement set forth in section 54-2023, Idaho Code. "Satisfactory proof" shall, for each course, consist of documentation:

- (a) Identifying the licensee, the title of the course or challenge exam, the course certification number, the course provider, the number of classroom hours, the completion date of the course or challenge exam, and including:

- (i) A transcript of the course taken;
 - (ii) A letter from the provider verifying successful completion of the course; or
 - (iii) A course completion certificate; and
- (b) Identifying the course certification approval number to establish that the course is approved for continuing education credit as provided by section 54-2023, Idaho Code. The commission may, in its sole discretion, accept alternative documentation establishing that the course is approved for credit.
- (8) Failure to submit proof. A licensee failing to submit satisfactory proof of completing the continuing education requirement after being requested to do so by the commission may have his license inactivated by the commission and shall not be entitled to reactivate the license unless and until he provides to the commission satisfactory proof that he meets the continuing education requirements of section 54-2023, Idaho Code. Nothing in this section shall limit the ability of the commission to investigate or discipline a licensee for violating subsection (5) of this section or for violating any other section of this chapter.
- (9) Change in personal information. An individual licensee, whether active or inactive, shall provide written notice to the commission, in the form and manner approved by the commission, of any change of his personal name, address of personal residence or personal telephone number. Notice shall be provided within ten (10) days of the change. If the licensee has changed his personal name, he shall also submit legal proof of the change and, if an active licensee, he shall have the broker submit the written notice of change to the commission.
- (10) Issuance of the license and effective date. A real estate license shall be deemed issued, and any requested license changes shall become effective, when the completed application, attachments, and any required fees are received at and approved by the commission. An application that is incomplete or lacking the required fees shall be returned to the applicant and no license shall be issued until a completed application and all required fees are received at and actually approved by the commission. A brokerage is not required to obtain, display or possess a physical license certificate as evidence of the individual's active licensure; however, the commission may make license certificates available for a fee as authorized by this chapter. A brokerage shall not display or otherwise make available to the public a license certificate for any individual who does not hold an active license with the brokerage.
- (11) Fees nonrefundable. No licensee shall be entitled to a refund of any fee after the license or license change has become effective.

History.

I.C., § 54-2018, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 6, p. 417; am. 2002, ch. 220, § 6, p. 605; am. 2003, ch. 65,

§ 3, p. 211; am. 2004, ch. 120, § 1, p. 403; am. 2005, ch. 107, § 4, p. 334; am. 2006, ch. 166, § 4, p. 501; am. 2007, ch. 98, § 3, p. 283; am. 2010, ch. 217, § 2, p. 485.

STATUTORY NOTES

Prior Laws.

Former § 54-2018 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2006 amendment, by ch. 166, deleted “a date to coincide with” following “expire on” in subsection (1); and in subsection (11), deleted “properly” following “when the” in the first sentence, and substituted “the required” for “proper” following “or lacking” and “all required” for “proper” preceding “fees are received.”

The 2007 amendment, by ch. 98, in subsection (4)(c), substituted “any required fees” for “the required fee”; in subsection (9), deleted “and the fee for issuing a new license certificate” following “proof of the change” in the third sentence, and deleted the former last

sentence, which read: “Upon receipt of the new license certificate or upon its effective date, whichever is later, the broker shall remove from public view any license certificate bearing the licensee’s former name”; deleted former subsection (10), which read: “Signature required. No license shall be valid unless the license certificate is signed by the licensee” and redesignated subsections accordingly; and in subsection (10), added “Issuance of the license and,” substituted “A real estate license shall be deemed issued, and any requested license changes shall become effective” for “A request for licensure or for license changes shall become effective,” and added the last two sentences.

The 2010 amendment, by ch. 217, added the second sentence in subsection (1).

54-2019. Denial of license applications. — (1) The commission may deny any license application, including an application for license renewal, upon the commission’s determination of any of the following:

- (a) The applicant does not possess all of the qualifications required for the license sought;
- (b) The applicant employed fraud, deception, misrepresentation, misstatement or omission or any unlawful means in applying for a license or taking the exam;
- (c) Within the five-year period immediately preceding the application, the applicant committed any act for which a real estate license in Idaho may be revoked or suspended;
- (d) Payment of any licensing fee by check that is returned by the banking institution due to insufficient funds, unless the reason for not paying on the check is the fault of the banking institution; or
- (e) There exist any other specific facts about the applicant that cause the commission to reasonably conclude that granting the applicant’s request for Idaho licensure is not in the best interests of the citizens of the state of Idaho.

(2) Where any of the facts referenced above warranting denial of the application are not discovered or determined by the commission until after the license has been issued, such facts may be grounds for the inactivation, expiration, termination, suspension or revocation of the license.

History.

I.C., § 54-2019, as added by 2000, ch. 285,

§ 3, p. 908; am. 2001, ch. 123, § 7, p. 417; am. 2005, ch. 107, § 5, p. 334.

STATUTORY NOTES

Prior Laws.

Former § 54-2019 was repealed. See Prior Laws, § 54-2001.

54-2020. Fees. — The Idaho real estate commission shall establish fees

which, in its discretion, are sufficient, when added to the other fees authorized by this chapter, or any other law or rule, to raise that revenue required to administer the provisions of this chapter.

The commission shall assess the following fees, in addition to any other fees established in this chapter or by rule, provided that all fees established by administrative rule of the commission shall remain effective from year to year unless changed through the rulemaking process prescribed in chapter 52, title 67, Idaho Code:

(1) For each year or portion thereof for which an active or inactive license is issued or renewed, a license fee in an amount not to exceed one hundred fifty dollars (\$150), the exact fee to be established by administrative rule of the commission;

(2) A tuition or registration fee for real estate education courses, course materials and any course exam fee. These fees shall be established based upon the total annual costs involved in the provision of all real estate education courses, course materials and course exam fees;

(3) A late license renewal fee in an amount not to exceed twenty-five dollars (\$25.00), the exact fee to be established by administrative rule of the commission;

(4) For the printing of a license certificate, a fee in an amount not to exceed fifteen dollars (\$15.00), the exact fee to be established by administrative rule of the commission;

(5) A fee in the amount allowed by law for insufficient funds checks or other types of insufficient payment;

(6) For the compilation of each certified copy of a licensee's education history or license history, a fee in an amount not to exceed ten dollars (\$10.00), the exact fee to be established by administrative rule of the commission;

(7) For issuance or renewal of a branch office license, a fee in an amount not to exceed fifty dollars (\$50.00), the exact fee to be established by administrative rule of the commission;

(8) An application fee for the certification and recertification of each real estate education provider, instructor or course as follows:

(a) For providers, an application fee in the amount of seventy-five dollars (\$75.00) for initial certification and fifty dollars (\$50.00) for recertification;

(b) For instructors, an application fee in the amount of fifty dollars (\$50.00) for initial certification and twenty-five dollars (\$25.00) for recertification;

(c) For courses, an application fee in the amount of fifty dollars (\$50.00) for initial certification and twenty-five dollars (\$25.00) for recertification. Provided however, that lower fee amounts may be established by administrative rule of the commission.

History.

I.C., § 54-2020, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 122, § 1, p. 416; am.

2001, ch. 123, § 8, p. 417; am. 2002, ch. 220, § 7, p. 605; am. 2007, ch. 98, § 4, p. 283; am. 2008, ch. 144, § 2, p. 428.

STATUTORY NOTES

Prior Laws.

Former § 54-2020 was repealed. See Prior Laws, § 54-2001.

Amendments.

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 122, § 1, in subsection (1), substituted “one hundred fifty dollars (\$150)” for “one hundred dollars (\$100)”

The 2001 amendment, by ch. 123, § 8, in the second undesignated paragraph, substituted “The commission shall assess” for “Each person seeking any type of Idaho real estate license shall pay”.

The 2007 amendment, by ch. 98, added the proviso at the end of the second undesignated paragraph; in subsection (1), substituted “established by administrative rule” for “determined by administrative rule,” and deleted the last sentence, which formerly read: “Fees

so established shall remain effective from year to year unless changed through the rules promulgation process prescribed in chapter 52, title 67, Idaho Code”; rewrote subsection (3), which formerly read: “A fee in the amount of twenty-five dollars (\$25.00) for late license renewal”; rewrote subsection (4), which formerly read: “A fee in the amount of fifteen dollars (\$15.00) for any license change that necessitates the issuance of a new license certificate”; in subsection (6), deleted “A fee in the amount of ten dollars (\$10.00)” from the beginning, and added the language beginning “a fee in an amount not to exceed ten dollars”; and in subsection (7), deleted “A fee in the amount of fifty dollars (\$50.00)” from the beginning, and added the language beginning “a fee in an amount not to exceed fifty dollars.”

The 2008 amendment, by ch. 144, added subsection (8) and the proviso at the end of the section.

54-2021. Disposition of funds. — All fees collected by the commission under the provisions of this chapter, except as designated in section 54-2070, Idaho Code, shall be deposited at least monthly in the state treasury and all moneys so deposited shall be deposited to the credit of the special real estate fund, which fund is hereby created. All moneys so deposited in the special real estate fund are hereby perpetually appropriated for the purpose of carrying out the provisions of this chapter. All expenditures from the fund by the commission under the provisions of this chapter shall be paid out on warrants drawn by the state controller upon presentation of proper vouchers approved by the commission. Such claims and supporting vouchers shall be examined by the state board of examiners in the same manner as other claims against the state of Idaho. For the purposes of carrying out the objectives of this chapter and in the exercise of the powers herein granted, the commission shall have power to make orders concerning the disbursement of the moneys in the special real estate fund, including the payment of compensation and expenses of its members, clerks and employees and for the payment of printing and for the training and education of all licensees under this chapter. Moneys in the fund may be expended by the commission for the promotion and improvement of the real estate profession, the advancement of education and research in the field of real estate including, but not limited to, courses sponsored by the commission or in conjunction with any university or college in the state and/or contracting for a particular research project in the field of real estate, and the promotion and advertising of the state of Idaho.

History.

I.C. § 54-2021, as added by 2000, ch. 285, § 3, p. 908.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.

Prior Laws.

Former § 54-2021 was repealed. See Prior Laws, § 54-2001.

54-2022. Real estate education — Prelicense requirements. —

(1) Except as provided in section 54-2015, Idaho Code, an applicant seeking a primary Idaho license as a real estate salesperson, broker or associate broker shall furnish satisfactory proof to the commission that the applicant has successfully completed current commission-approved and accredited courses of real estate study as follows:

(a) Salesperson's license. For a salesperson's license, the applicant shall complete a total of ninety (90) classroom hours or the equivalent in available correspondence hours;

(b) Broker's or associate broker's license. Applicants seeking a broker's or associate broker's license shall, in addition to meeting the requirements for a salesperson's license, successfully complete four (4) specified courses in advanced real estate study, for a minimum of ninety (90) additional classroom hours, or the equivalent in available correspondence hours.

(2) Each applicant shall successfully complete all prelicense real estate courses within no more than three (3) years prior to the date of the license application. However, upon written request for special consideration by the license applicant, the commission may waive or modify the three-year requirement at its discretion, based on the applicant's experience or additional education. Each waiver request shall be submitted with a current certified license history from Idaho or the applicant's other licensing jurisdiction, which history shall indicate all disciplinary actions taken against the applicant's license and the status and standing of such license in such licensing state or jurisdiction, along with sufficient proof of education completion.

(3) To receive credit for prelicense real estate courses, a student must regularly attend and complete the course, and such course must meet all requirements set forth in section 54-2036, Idaho Code.

(4) No credit will be given for courses taken for audit.

(5) Credit for completion of approved prelicense education coursework will not be granted when the content of a course repeats that for which credit has been previously received.

(6) Upon written request from a license applicant, the commission may waive or modify one (1) or more prelicense course requirements based upon the applicant's satisfactory completion of similar real estate courses in Idaho or another state or jurisdiction. The request for waiver shall be accompanied by an official transcript from the institution that provided the course of instruction, along with a description of the subjects covered in the course and the number of classroom hours involved in the instruction. "Satisfactory completion" means the applicant regularly attended the course and received a final grade of "C" or better.

History. § 3, p. 908; am. 2001, ch. 123, § 9, p. 417; am. I.C. § 54-2022, as added by 2000, ch. 285, 2008, ch. 142, § 2, p. 409.

STATUTORY NOTES

Prior Laws. Former § 54-2022 was repealed. See Prior Laws, § 54-2001. section (2), substituted “three (3) years” for “five (5) years” and “three-year requirement” for “five-year requirement.”

Amendments. The 2008 amendment, by ch. 142, in sub-

54-2023. Continuing education requirements. — Each licensee applying to renew an Idaho real estate license on active status, and each Idaho licensee applying to change from inactive to active license status, shall successfully complete a commission core course, plus the required number of classroom hours of commission-approved or certified continuing education coursework as provided in this section.

(1) Required number of classroom hours. The required number of classroom hours is as follows:

- (a) Renewing license on active status. A licensee renewing on active status must successfully complete a commission core course, plus sixteen (16) classroom hours of continuing education, on or before the current license expiration date.
- (b) Change from inactive to active. Unless the licensee is within the initial licensing period, a licensee changing from inactive to active license status shall complete a commission core course, plus sixteen (16) classroom hours of continuing education, before he can change to active license status. If the inactive licensee is within his initial licensing period, no continuing education is required to change to active license status.
- (c) Credits used to reactivate license. Continuing education credit hours applied to activate an inactive license are considered “spent” and may not thereafter be applied toward the continuing education requirements for subsequent license renewal.

(2) No duplicate credit. No licensee may obtain continuing education credit for completing:

- (a) Any core course curriculum for which he has previously received continuing education credit; or
- (b) Any course curriculum for which he has received continuing education credit in the same license period.

(3) Excess credits. The classroom hours shall apply to the license period in which such course is completed; hours completed in excess of those required for the license period shall not accumulate or be credited for the purposes of subsequent license renewal periods.

(4) Commission-ordered education. No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action.

(5) Obtaining continuing education classroom hours. In order to obtain continuing education classroom hours, a licensee must:

- (a) Successfully complete a commission-approved continuing education course;

- (b) Successfully complete a commission-approved continuing education challenge exam;
 - (c) Attend a regularly scheduled meeting of the commission from the time the meeting is called to order until the meeting is adjourned or until the licensee is excused by the commission chairperson. A maximum of four (4) hours for this activity shall be credited for any one (1) meeting in any one (1) license period;
 - (d) Successfully complete a commission-approved broker prelicense course, or a commission-approved continuing education challenge exam, in advanced real estate study. Continuing education credit may be obtained for retaking the same broker prelicense course or challenge exam only if completed after three (3) years of completing the previous course or challenge exam; or
 - (e) Provide to the commission a transcript or course completion certificate of successful completion of any of the following courses without commission preapproval of the curriculum, instructors or providers:
 - (i) Professional designation courses. Any course developed by national professional organizations that is required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice;
 - (ii) Courses accredited by another profession or jurisdiction. Any course approved by and offered in satisfaction of another professional or occupational licensing authority's education requirements, if the commission determines that the course is within the approved topic areas established by the commission and if the course otherwise meets commission standards for course certification including distance learning and minimum classroom hour requirements; or
 - (iii) Courses offered by an accredited college or university. Any course offered in satisfaction of a degree requirement by an accredited college or university if the commission determines that the course is within the approved topic areas established by the commission.
 - (f) If a certified course instructor, teach a live course for which continuing education credit may be obtained. Credits shall be granted for the number of classroom hours taught.
- (6) Licensee duty to keep satisfactory proof. The licensee shall keep satisfactory proof of having completed the continuing education requirement and shall submit such proof at the request of the commission as provided in section 54-2018, Idaho Code.
- (7) Provisional license — Extension of time. A three (3) month extension of time for completing the education requirements may be obtained by submitting with the renewal application, or application to activate, satisfactory evidence showing that the applicant was unable to comply with such education requirements. Such evidence shall be:
- (a) Bona fide hardship preventing completion of the reinstatement requirements of an inactive license;
 - (b) Health reasons preventing attendance or completion; or
 - (c) Other compelling cause beyond the control of the applicant while engaged in the real estate business.

If such an extension is granted, the licensee shall receive a provisional license for a period of time not to exceed three (3) months. No further extension of time may be granted. A license issued or renewed after an extension of time has been granted shall retain the original license expiration date. Failure to satisfy the continuing education requirement within the time granted shall result in the automatic inactivation of the license.

History.

I.C., § 54-2023, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 10, p. 417; am. 2002, ch. 280, § 2, p. 817; am. 2003, ch. 65, § 4, p. 211; am. 2004, ch. 120, § 2, p. 403;

am. 2005, ch. 107, § 6, p. 334; am. 2006, ch. 166, § 5, p. 501; am. 2007, ch. 98, § 5, p. 283; am. 2008, ch. 142, § 3, p. 410; am. 2010, ch. 217, § 3, p. 485; am. 2012, ch. 75, § 1, p. 217.

STATUTORY NOTES

Prior Laws.

Former § 54-2023 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2006 amendment, by ch. 166, rewrote subsections (1)(a) and (b), which formerly read: “(a) Renewing license on active status. A licensee renewing on active status effective prior to July 1, 2003, must successfully complete at least eight (8) classroom hours of continuing education, plus one (1) commission-approved core course, on or before the current license expiration date. A licensee renewing on active status effective on or after July 1, 2003, must successfully complete at least sixteen (16) classroom hours of continuing education, plus one (1) commission-approved core course, on or before the current license expiration date.”

“(b) Change from inactive to active. A licensee changing from inactive to active license status must meet the continuing education requirements for an active license for the current licensing period. If the inactive licensee renewed his license on or after July 1, 2003, he shall complete sixteen (16) classroom hours of continuing education, plus one (1) commission-approved core course, before he can change to active license status. If the inactive licensee is within a license renewal period that began prior to July 1, 2003, he shall complete eight (8) classroom hours of continuing education plus one (1) commission-approved core course, before he can change to active license status. If the inactive licensee is within his initial licensing period,

no continuing education is required to change to active license status.”

The 2007 amendment, by ch. 98, in subsection (5)(c), deleted the former second and third sentences, which read: “The licensee shall provide at least seven (7) days’ advance notice to the education section of the commission of his intent to attend the meeting. Failure to provide advance notice shall result in no continuing education hours being credited,” and substituted “four (4) hours” for “three (3) hours.”

The 2008 amendment, by ch. 142, in paragraph (5)(d), substituted “three (3) years” for “five (5) years”; and in paragraphs (5)(e)(ii) and (5)(e)(iii), inserted “commission determines that the.”

The 2010 amendment, by ch. 217, added paragraph (1)(c); in the first sentence in paragraph (5)(c), deleted “entire” preceding “regularly-scheduled meeting,” and added “from the time the meeting is called to order until the meeting is adjourned or until the licensee is excused by the commission chairperson”; and deleted paragraph (7)(c), which formerly read: “Active duty in the military service with assignment to a permanent duty station outside of the state during the last twelve (12) months of a license period,” and redesignated former paragraph (7)(d) as present paragraph (7)(c).

The 2012 amendment, by ch. 75, added “and if the course otherwise meets commission standards for course certification including distance learning and minimum classroom hour requirements” at the end of paragraph (5)(e)(ii).

54-2024. Purpose of certification. — It is the intent of this chapter that delivery of high quality real estate education to licensees and to those seeking to become licensed in the state of Idaho is a necessary and reasonable way to protect the citizens, businesses and public interests in Idaho. Therefore, the commission shall create and maintain a certification program for real estate education providers, instructors and course content.

History.

I.C. § 54-2024, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2024 was repealed. See Prior
Laws, § 54-2001.

54-2025. Certification requirements. — (1) Certification required. Except as otherwise provided in section 54-2023(5)(e), Idaho Code, certification must be obtained by all course providers, instructors teaching any course other than a continuing education elective course, and for all course content in order for the course to be credited toward prelicense or continuing education requirements in Idaho under this chapter.

(2) Courses, instructors and providers monitored. The commission or its representative may monitor any course for the purpose of course, instructor or provider certification.

(3) If the commission at any time determines that an instructor, course or provider is not meeting the requirements for continued commission approval or certification, written notification detailing the deficiencies requiring correction shall be made immediately to the appropriate person. The commission shall take no action to withdraw the certification for thirty (30) days from the date of the written notice. At the expiration of this period, if the deficiencies have not been corrected to the commission's satisfaction, the commission may take action to withdraw certification. Withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and the rules of the commission.

History.

I.C. § 54-2025, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 11, p. 417;
am. 2005, ch. 107, § 7, p. 334.

STATUTORY NOTES**Prior Laws.**

Former § 54-2025 was repealed. See Prior
Laws, § 54-2001.

54-2026. Certification of course providers. — (1) Degree-granting institutions. Degree-granting, accredited colleges and universities in any state or jurisdiction shall be deemed to be approved course providers in Idaho. However, course content must still be approved for the real estate education course to receive credit toward prelicense or continuing education licensing requirements in Idaho.

(2) Other course providers. All other course providers desiring to offer real estate courses for credit toward Idaho prelicense or continuing education requirements must first meet the following qualifications and receive certification. Each applicant seeking certification as a course provider shall comply with the following:

(a) File an application for certification in the form and manner required

by the commission, along with proper fees, at least two (2) months prior to contemplated date of opening or first accredited course offering;

(b) Designate a “director” or “individual in charge,” who shall be responsible for the course provider’s operation and its real estate courses, and with whom the commission may communicate. Unless this requirement is waived upon special review of the commission in the manner stated below, the individual in charge must not have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction. The designated individual in charge must not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of any felony or a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing in a court of proper jurisdiction. The failure of the provider to have in place a designated individual meeting the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the provider’s certificate as provided in section 54-2025(3), Idaho Code;

(c) File a properly executed “irrevocable consent to service of process” in the manner and form prescribed by the commission and in substantial accordance with section 54-2012(1)(k), Idaho Code. The commission, in its discretion, may make such additional investigation and inquiry relative to the applicant for provider certification as it deems advisable and, if good cause exists, may deny or accept the application for certification.

History. 2004, ch. 120, § 3, p. 403; am. 2010, ch. 212, I.C., § 54-2026, as added by 2000, ch. 285, § 3, p. 456. § 3, p. 908; am. 2003, ch. 66, § 4, p. 220; am.

STATUTORY NOTES

Prior Laws. the section reference in paragraph (2)(c) in Former § 54-2026 was repealed. See Prior Laws, § 54-2001. light of the 2010 amendment of § 54-2012.

Amendments. The 2010 amendment, by ch. 212, updated

54-2027. Duties and requirements of all certified course providers. — Failure of a certified course provider to comply with the following duties and requirements shall be grounds for the commission to withdraw or cancel the provider’s certification for cause.

(1) Discrimination prohibited. Each certified course provider shall at all times be in compliance with state and federal laws, rules and regulations regarding all aspects of equal opportunity and protection of civil rights. No course provider shall engage in discriminatory practices, nor allow their course instructor, or method of delivery to violate laws prohibiting discrimination. Each course provider will fully comply with any requirements of the Americans with disabilities act regarding access to and delivery of its courses, including the provision of accessible facilities and reasonable accommodations for students.

(2) Open access to course offerings. Registration and attendance at all certified courses offered for credit toward the education requirements of this chapter shall be open to all persons meeting normal course prerequisites; provided however, a certified course provider located in or affiliated with a licensed real estate brokerage company or professional association may refuse access to any licensee or unlicensed person based on that licensee's or unlicensed person's affiliation with another organization or brokerage company, or the licensee's or unlicensed person's membership status in any professional organization unless such course provider has received financial support from the commission for its particular course offering. Nothing in this section shall restrict a course provider from charging a separate and reasonable course fee to nonaffiliated or nonmember licensees or unlicensed persons.

(3) Disclosure of fees. All fees charged to a student by a course provider shall be specified separately in writing. If additional fees are charged for supplies, materials or books required for coursework, such fees shall be itemized by the provider and, upon payment of such fees, the supplies, materials or books shall become the property of the student. All fees and the manner in which they are to be paid shall be stated in a student contract, in a form approved by the commission. The student contract shall expressly include the provider's policy regarding the return of fees in the instance where the student is dismissed or voluntarily withdraws from the course.

(4) Facilities and supportive personnel. The provider shall provide the facilities and all supportive qualified personnel or approved proctors necessary to adequately implement its real estate program.

(5) Student records and other requirements. Each Idaho certified course provider shall comply with the following requirements:

(a) Records. For each individual student, create and retain for a period of five (5) years, a complete, accurate and detailed record which shall include the total number of hours of instruction undertaken and satisfactorily or unsatisfactorily completed in the area of study;

(b) Course completion lists. Within five (5) working days after conclusion of each course of instruction, the provider shall submit to the council or commission, in the form and manner designated by the commission, a list which shall include the names and social security numbers or, if licensed, the license numbers, of the students completing the course of instruction, the name of the course, the name of the instructor, the number of hours included in the course, the date of the course and the location. The list shall be certified by the instructor from whom the students received instruction and an authorized representative of the provider;

(c) Grades. The provider will provide written notification to students who successfully or unsuccessfully complete a course within thirty (30) days of the course completion date;

(d) Evaluations. Upon the conclusion of each course, the provider shall collect written evaluations from students for the course and instructor, using an evaluation form approved by the commission. The provider shall keep such evaluations for a period of one (1) year from the course completion date. Upon written request from the commission, the provider

shall submit either the student evaluations for the course and instructor, or a written summary of those evaluations using a form approved by the commission.

(e) Course schedules. Each provider shall submit schedules of courses and instructors as requested by the commission and submit changes promptly as they occur. Whenever there is a change in a course including, but not limited to, a change in curriculum, course length or instructor, the provider shall promptly notify the commission in writing of the change.

(6) Instructors. A certified provider may offer a continuing education elective course without obtaining approval or certification for the course instructor; provided however, the provider shall take reasonable steps to ensure that the instructor is competent to teach the course and shall maintain resumes or other biographical information that documents the qualifications of the instructor. The provider shall make such documentation available to the public and commission upon written request. A course provider shall not offer for credit any course that is being taught below the minimum teaching standards established by the commission or that is being taught in a manner that is detrimental to the purpose of educating licensees.

(7) Posting and recording fees. The commission may require that course providers pay to the commission a nonrefundable posting and recording fee to defray normal expenses incurred in maintaining the certificate program. The fee amount shall be established by the commission by motion.

(8) Advertising restrictions:

(a) Providers may advertise that they are currently certified by the commission, if current certification has been approved, but no such advertising may state or imply that the provider is an agency of the commission or the council;

(b) No course provider shall provide any information to the public or to prospective students which is misleading in nature. Information is misleading when, taken as a whole, there is distinct probability that it will deceive the persons whom it is intended to influence.

(9) Changes in certification. Certification shall be granted to the particular provider for the specific ownership, provider location, and named individual in charge as designated in the application for certification. Any changes in ownership, provider location, or provider name, or named individual in charge must be submitted for approval to the commission, at least one (1) month in advance of the effective date of the proposed changes.

History.

I.C., § 54-2027, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 12, p. 417; am. 2005, ch. 107, § 8, p. 334; am. 2006, ch.

166, § 6, p. 501; am. 2007, ch. 98, § 6, p. 283; am. 2008, ch. 142, § 4, p. 412; am. 2010, ch. 213, § 3, p. 462.

STATUTORY NOTES

Prior Laws.

Former § 54-2027 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2006 amendment, by ch. 166, in subsection (5)(b), inserted “or, if licensed, the license numbers”.

The 2007 amendment, by ch. 98, near the beginning of subsection (2), substituted “credit toward the education requirements of this chapter” for “prelicense or continuing education credit”; in subsection (5)(d), deleted former paragraph (i) which read: “For each prelicense course, the provider shall promptly submit the collected student written evaluations to the commission” and merged the provisions of former paragraph (ii) with the introductory paragraph, substituting “submit either the student evaluations for the course and instructor, or a written summary of those evaluations” for “submit a written summary of the student evaluations for the course and instructor”; and in subsection (6), deleted

“certification not required for continuing education elective courses” following “Instructors” at the beginning, in the first sentence, inserted “take reasonable steps to ensure that the instructor is competent to teach the course and shall,” deleted “to teach the continuing education elective course” from the end, and added the last two sentences.

The 2008 amendment, by ch. 142, in paragraph (5)(a), substituted “For each individual student, create and retain for a period of five (5) years” for “Maintain for each individual student.”

The 2010 amendment, by ch. 213, in the first sentence in paragraph (5)(b), inserted “in the form and manner designated by the commission,” and deleted “alphabetical” preceding “list” and “addresses” following “shall include the names.”

Federal References.

The Americans with disabilities act, referred to in subsection (1), is codified as 42 U.S.C.S. § 12101 et seq.

54-2028. Term of provider certification and renewal. — Each course provider’s certification issued by the commission shall be for a term of two (2) years. The exact expiration date will be shown on the provider certificate. In order to maintain certification, each provider must return a properly completed renewal application on a form provided by the commission, along with all necessary attachments and renewal fees to the commission office prior to the expiration date for commission approval. Recertification is not effective until the commission has formally approved the application for renewal. Failure to obtain approved renewal of certification prior to its expiration date will result in no credit being given for courses not yet successfully completed by the expiration date.

History.

I.C., § 54-2028, as added by 2000, ch. 285, § 3, p. 908.

STATUTORY NOTES

Prior Laws.

Former § 54-2028 was repealed. See Prior Laws, § 54-2001.

54-2029. Notice of potential expiration of certification. — Certified providers who have not applied for renewal of certification or whose renewal applications do not meet the qualifications for renewal of certification shall be notified by the commission of potential termination at least fifteen (15) days before termination occurs.

History.

I.C., § 54-2029, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Prior Laws.

Former § 54-2029 was repealed. See Prior
Laws, § 54-2001.

54-2030. Expiration or withdrawal of provider certification — Notice to students. — If a provider’s certification expires, is terminated or withdrawn for any reason, the provider will no longer be approved by the commission, and no credit will be given to students for any courses starting after the expiration date. A provider whose certification has expired, been terminated or withdrawn for any reason, shall immediately notify every present or future student in writing that it is not a certified provider of approved real estate courses in Idaho, and that no credit for prelicense or continuing education will be given for its courses.

History.

I.C., § 54-2030, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Prior Laws.

Former § 54-2030 was repealed. See Prior
Laws, § 54-2001.

54-2031. Withdrawal of Idaho certification for cause — Process. — The commission may withdraw a provider’s certification at any time, for cause, including the violation of any provision of this chapter by the provider or those for whom the provider is responsible. Any withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, the rules of practice and procedure of the Idaho real estate commission, this chapter and all laws of the state of Idaho.

History.

I.C., § 54-2031, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Prior Laws.

Former § 54-2031 was repealed. See Prior
Laws, § 54-2001.

54-2032. Certification of instructors. — All individuals wishing to teach real estate courses for credit toward prelicense or the commission continuing education core course requirements in Idaho must first be approved or certified by the commission for each course the individual wishes to teach.

History.

I.C., § 54-2032, as added by 2000, ch. 285,
§ 3, p. 908; am. 2005, ch. 107, § 9, p. 334.

STATUTORY NOTES**Prior Laws.**

Former § 54-2032 was repealed. See Prior
Laws, § 54-2001.

54-2033. Instructor qualifications. — (1) Qualified instructors at degree-granting institutions. A qualified or full-time instructor or professor of an accredited college or university in any state or jurisdiction and who teaches real estate-related courses is deemed to be an approved instructor of such courses, in Idaho, for the purposes of this chapter.

(2) Other instructor applicants. All other individuals wishing to teach any real estate courses for credit toward Idaho prelicense requirements, including the business conduct and office operations course, or the commission continuing education core course requirements must first meet the following additional qualifications and receive separate certification for each course to be taught:

(a) Unless this requirement is waived upon special review of the commission in the manner stated below, no individual instructor seeking certification may have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction. Further, the individual may not have been convicted, issued any fine, placed on probation, received a withheld judgment, or completed any sentence of confinement for or on account of any felony, or any misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing, in a court of proper jurisdiction. The failure of a certified instructor to maintain the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the instructor's certificate as provided in section 54-2025(3), Idaho Code.

(b) Each applicant for certification shall also:

- (i) Submit a completed application for instructor certification in the form and manner required by the commission, with all required fees;
- (ii) File an executed "irrevocable consent to service of process" in the manner and form prescribed by the commission and according to section 54-2012(1)(k), Idaho Code;

(iii) Qualify as at least one (1) of the following:

1. An attorney at law actively licensed in any state or jurisdiction with at least five (5) years of active practice in the areas of study proposed to be taught, and who has also successfully completed a commission-approved instructor training course or procedure, including an assistant teaching period;
2. An individual currently approved or certified and in good standing as a real estate instructor for the same or similar course material in any other state or jurisdiction;
3. An individual who is appointed to teach a nationally recognized

real estate course which is generally accepted in other states or jurisdictions; or

4. An individual with at least five (5) years active real estate-related experience who has also successfully completed a commission-approved instructor training procedure, including an assistant teaching period.

(3) Instructor teaching standards. An instructor certified to teach any real estate course for credit toward the requirements of this chapter shall comply with the minimum teaching standards established by the commission. A certified instructor shall not teach the course in a manner that is detrimental to the purpose of educating licensees.

History.
I.C., § 54-2033, as added by 2000, ch. 285, § 3, p. 908; am. 2003, ch. 66, § 5, p. 220; am. 2004, ch. 120, § 4, p. 403; am. 2005, ch. 107,

§ 10, p. 334; am. 2006, ch. 166, § 7, p. 501; am. 2008, ch. 142, § 5, p. 414; am. 2010, ch. 212, § 4, p. 456.

STATUTORY NOTES

Prior Laws.
Former § 54-2033 was repealed. See Prior Laws, § 54-2001.

Amendments.
The 2006 amendment, by ch. 166, inserted “any” and “including the business conduct and office operations course” in the introductory paragraph in subsection (2); in subsection (2)(b)(i), deleted “properly” following “Submit a” and substituted “required” for “proper”; and substituted “an assistant” for “a student” in subsections (2)(b)(iii)1. and 4.
The 2008 amendment, by ch. 142, added subsection (3).
The 2010 amendment, by ch. 212, updated the section reference in paragraph (2)(b)(ii) in light of the 2010 amendment of § 54-2012.

54-2034. Special consideration — Discretion of the commission.
— The commission may, in its discretion, make such additional investigation and inquiry relative to the applicant for instructor certification as it shall deem advisable, and if other good cause exists, may deny or accept the application for certification. Based upon an applicant’s educational background, experience in related activities, or a review of the applicant’s evaluations as an assistant teacher, the commission may modify the requirements for instructor certification; such modification may include reducing the requirements or assigning additional requirements for certification.

History.
I.C., § 54-2034, as added by 2000, ch. 285, § 3, p. 908; am. 2006, ch. 166, § 8, p. 501.

STATUTORY NOTES

Prior Laws.
Former § 54-2034 was repealed. See Prior Laws, § 54-2001.

Amendments.
The 2006 amendment, by ch. 166, substituted “an assistant” for “a student.”

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Brokers, § 10 et seq.

C.J.S. — 12 C.J.S., Brokers, §§ 13 et seq. and 41 et seq.

54-2035. Term of instructor certification and renewal. — (1) Certification. Each instructor certification issued by the commission shall be for a term of two (2) years. The exact expiration date will be shown on the instructor certificate.

(2) Recertification.

(a) In order to be recertified, each instructor shall:

- (i) Return a completed recertification application on a form provided by the commission, along with all necessary attachments and fees, to the commission office prior to the expiration date for commission approval;
- (ii) Demonstrate the ability to adequately teach the course. The ability to adequately teach shall be determined by the commission based upon any or all of the following:

1. Evaluations received from students;
2. Direct observation of the instructor's teaching performance by a commission representative; or
3. Review of the outline and reference materials provided for the course; and

(iii) Have attended a commission-sponsored instructor development seminar or received other acceptable training in methods of teaching adults during the preceding two (2) years.

(b) Recertification shall not be effective until the commission formally approves the application for renewal. An instructor's failure to obtain approved recertification prior to the expiration of the certification will result in no credit being given for any course taught by the instructor whose certification has expired prior to conclusion of the course.

History.

I.C., § 54-2035, as added by 2000, ch. 285,

§ 3, p. 908; am. 2003, ch. 65, § 5, p. 211; am. 2007, ch. 98, § 7, p. 283.

STATUTORY NOTES

Prior Laws.

Former § 54-2035 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2007 amendment, by ch. 98, in subsection (2)(a)(i), deleted "properly" preceding "completed recertification application"; in subsection (2)(a)(ii), rewrote the first sen-

tence, which formerly read: "Have adequately taught or assistant taught, during the preceding two (2) years, at least twenty (20) hours of each course for which recertification is sought," substituted "ability to adequately teach" for "adequacy of instructor teaching performance" in the second sentence, and inserted "teaching" in subsection (2)(a)(ii)2.

54-2036. Certification of courses and course content. — Every real estate course offered for prelicense or continuing education credit for an Idaho real estate license shall first be certified and accredited by the Idaho real estate commission.

(1) An application for course certification must be submitted in the form and manner required by the commission, with the required fees, at least two (2) months prior to the contemplated date of the first course offering.

(2) Minimum requirements for course certification:

(a) Each course must be certified individually, offered only through a provider certified or approved in Idaho, and taught by an instructor certified or approved in Idaho in accordance with this chapter.

(b) Each prelicense course must contain at least twenty (20) classroom hours, and each continuing education course must contain at least two (2) classroom hours.

(c) Exam time shall not be included as approved classroom hours of instruction.

(d) A classroom hour is defined as a period of at least fifty (50) minutes of actual instruction.

(e) Distance learning courses. The design and delivery of each distance learning course shall be certified by the association of real estate license law officials or by another institution whose certification standards are deemed equivalent by the commission. The credit hours for a certified distance learning course shall be based upon the same number of hours which would be credited for an equivalent live course, and must include a commission-approved final exam.

(f) Each prelicense course must include a commission-approved final exam requiring a minimum passing score of seventy percent (70%).

(g) Continuing education course exam.

(i) A licensee may receive continuing education course credit without having to take or pass an exam if the licensee personally attends the entire live presentation of an approved course.

(ii) The commission may substitute all or a portion of the continuing education coursework required when a licensee shows evidence of passing a commission-approved challenge exam.

(h) Exam retake policy. Each certified course provider may, at its option, allow students who complete a course and then fail the course exam one (1) opportunity to retake the approved course exam within the following time periods:

(i) Prelicense course exam retakes must occur within one (1) month of the original course exam;

(ii) Continuing education course exam retakes must occur within that course's certification period;

(iii) If a student fails the retake exam for any prelicense or continuing education course, the student must repeat the entire course and pass the final exam to receive credit;

(iv) A course provider shall not permit a student who takes and fails a challenge exam to retake the exam. A student who fails a challenge exam must take the entire course and pass the final exam to receive credit for the course.

(i) Challenge exams. Except where the prelicense requirements have been waived or modified by the commission pursuant to section 54-2022(6), Idaho Code, a student shall not earn credit for any prelicense course by challenging and passing the course exam without otherwise completing all course requirements.

(3) Approved topics. The commission shall establish specific, approved topics for course content for prelicense courses and continuing education courses as it deems appropriate to current real estate practices and laws.

History.

I.C., § 54-2036, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 13, p. 417;

am. 2002, ch. 280, § 3, p. 817; am. 2005, ch. 107, § 11, p. 334; am. 2006, ch. 166, § 9, p. 501; am. 2010, ch. 213, § 4, p. 462.

STATUTORY NOTES**Prior Laws.**

Former § 54-2036 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2006 amendment, by ch. 166, substituted “the required” for “proper” in subsection (1); substituted “complete a course and then fail the course” for “fail the initial course” in the introductory paragraph in subsection (2)(h); deleted “challenge” following “course” in subsection (2)(h)(ii); added subsection (2)(h)(iv); and inserted “Except where the

prelicense requirements have been waived or modified by the commission pursuant to section 54-2022(6), Idaho Code” at the beginning of subsection (2)(i).

The 2010 amendment, by ch. 213, deleted “national” preceding “association” in the first sentence in paragraph (2)(e).

Compiler’s Notes.

For more on the association of real estate license law officials, referred to in paragraph (2)(e), see <https://www.arello.org>.

54-2037. Term of course certification and renewal. — Each course certification issued by the commission shall be for a term of two (2) years. The exact expiration date will be shown on the course certificate. In order to maintain certification a course provider, for each course, must return a properly completed renewal application on a form provided by the commission, along with all necessary attachments and renewal fees to the commission office prior to the expiration date and within sufficient time for commission review and approval. Recertification is not effective until the commission has formally approved the application for renewal. Failure to obtain approved renewal of certification prior to its expiration date will result in no credit being given for a course if its certification has expired prior to conclusion of the course.

History.

I.C., § 54-2037, as added by 2000, ch. 285, § 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2037 was repealed. See Prior Laws, § 54-2001.

54-2038. Designated broker — General responsibilities — Broker price opinions. — The requirement that each brokerage company be maintained and conducted in compliance with the Idaho real estate license law and the Idaho real estate brokerage representation act is the responsibility of its designated broker. The designated broker is responsible for the actions of its licensees and associated unlicensed persons performed within the course and scope of their employment or agency, regardless of the location of the company’s business or where representation is conducted.

(1) A designated broker is required to:

(a) Supervise and control, in the manner required by law and rule, all office locations, and the activities of all licensees and unlicensed persons

associated with that brokerage company or for whom that designated broker is responsible;

(b) Review and approve all real estate agreements including, but not limited to, those related to listing, selling or purchasing property and brokerage representation agreements;

(c) Be reasonably available to manage and supervise the brokerage company during regular business hours. When a broker is a regular full-time employee or is engaged in a full-time activity at a location other than where the broker is licensed to do business, a presumption will be made that the broker is unable to manage and supervise the brokerage company in accordance with these requirements, and no sales associate shall be licensed under the broker until such presumption is overcome by evidence to the contrary, satisfactory to the commission.

(2) A broker who is otherwise qualified to do business in Idaho, but is not able to manage and supervise according to this section, may be licensed as a "limited broker" in Idaho and shall not have any sales associates licensed under that broker.

(3) An actively licensed salesperson or broker may, in the ordinary course of business, give an opinion of the price of real estate for the purpose of a prospective listing or sale. Only an actively licensed broker or associate broker may prepare and render a broker price opinion, as defined in this chapter. An associate broker who prepares and renders a broker price opinion shall notify the designated broker and the associate broker may not accept any fee except through the designated broker. Any licensee who renders a price opinion that does not comply with this subsection or with the requirements of section 54-4105, Idaho Code, is subject to discipline by the commission.

(4) A designated broker shall not allow any person who is not properly licensed to represent that broker as a sales associate or otherwise, in any real estate business activities requiring a real estate license. "Properly licensed" means a license or a change in license that has been made effective by the commission.

History.

I.C., § 54-2038, as added by 2000, ch. 285,
§ 3, p. 908; am. 2011, ch. 108, § 2, p. 275.

STATUTORY NOTES

Prior Laws.

Former § 54-2038 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2011 amendment, by ch. 108, added "Broker price opinions" in the section heading, added subsection (3), and redesignated former subsection (3) as subsection (4).

Compiler's Notes.

The Idaho real estate license law, referred to in the first paragraph, is codified as §§ 54-2001 to 54-2081.

The Idaho real estate brokerage representation act, referred to in the first paragraph, is codified as §§ 54-2082 to 54-2097.

JUDICIAL DECISIONS

Cited in: Department of Emp. v. Bake
Young Realty, 98 Idaho 182, 560 P.2d 504
(1977).

RESEARCH REFERENCES

C.J.S. — 12 C.J.S., Brokers, §§ 24, 25.

54-2039. Broker and branch office manager absences and changes. — Each real estate brokerage company must have a legally qualified individual acting as designated broker at all times. Each branch office licensed under section 54-2016(4), Idaho Code, shall have, at all times, a legally qualified individual acting as branch office manager.

(1) Broker or branch manager absent for more than twenty-one days. A designated broker who is absent from his main office for more than twenty-one (21) consecutive days shall appoint a qualified designated broker of another office, or an associate broker who is licensed and associated with the absent broker, to manage, supervise and oversee the regular office operations of the company in his absence. A branch office manager who is absent for more than twenty-one (21) consecutive days from a branch office in which trust funds and original transaction files are maintained shall appoint a qualified individual to manage, supervise and oversee the regular office operations of the company in his absence. The appointee shall conduct all supervisory activities normally required of the designated broker or branch manager. Except in the event of an emergency, the designated broker or branch manager shall notify the commission in writing of the name of the appointee prior to the broker or manager leaving the office for an extended period of more than twenty-one (21) consecutive days.

(2) Broker or branch manager absent for more than sixty days. A designated broker, or manager of a branch office in which trust funds and original transaction files are maintained, shall not be absent from his main office for a period longer than sixty (60) consecutive days. In the case of such extended absence, another qualified individual shall be designated to act as broker or branch office manager. If a designated broker is absent from his main office for a period longer than sixty (60) consecutive days, and no new broker is designated to act as broker for the brokerage company, the commission shall place on inactive status the licenses of the absent broker and of all licensees associated with him, and all brokerage listing agreements and all buyer brokerage agreements shall be terminated.

(3) Change of broker in business entity. A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required in this chapter, the business entity shall have ten (10) business days in which to designate another

qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(4) Effective date of changes. No change in designated broker shall be effective until written notice is received and approved by the commission, in the form required.

(5) Failure to comply — Original broker to remain responsible except in the case of revocation. Where a licensed brokerage company fails to comply with this section and its office is closed, or during any period where the designated broker has left the brokerage company and no new broker has been designated to act for the company, the original designated broker shall remain responsible for trust account funds, pending transactions and records in the manner described in sections 54-2041 through 54-2049, Idaho Code. However, if the license of the original designated broker of the brokerage company is revoked, the license of that brokerage company shall be made inactive and its office closed until the company designates another qualified individual to act as broker.

History.

I.C., § 54-2039, as added by 2000, ch. 285,
§ 3, p. 908; am. 2001, ch. 123, § 14, p. 417.

STATUTORY NOTES

Prior Laws.

Former § 54-2039 was repealed. See Prior
Laws, § 54-2001.

RESEARCH REFERENCES

C.J.S. — 12 C.J.S., Brokers, §§ 24, 25.

54-2040. Main office or business location. — (1) Definite location required. Each individual licensed as a designated real estate broker under the provisions of this chapter shall be required to have and maintain a definite, physical place of business, which place shall serve as his main office for the transaction of business and be regarded for the intent and purpose of this chapter as his principal place of business. Notice in writing shall be given to the commission of any change by the broker of the business name, location, or mailing address. No other location may be used as a main office location until proper notice is acknowledged by the commission. A change of business name or location without notification to the commission shall automatically inactivate the license previously issued. The broker shall also notify the commission in writing of any change in the business telephone number. A designated broker is not required to obtain, display or possess a physical license certificate as evidence of the business's licensure; however, the commission may make license certificates available for a fee as authorized by this chapter. The broker shall not display or otherwise make available to the public any license certificate bearing a former business name or former location.

(2) Broker for more than one business. A qualified individual may be the designated broker for more than one (1) licensed real estate business entity

only if all licensed businesses operate their main offices at the same physical location.

(3) Brokers sharing same business location. More than one (1) individually licensed broker may operate an office at the same address only if each broker operates under a business name which clearly identifies the broker as an individual within the group of brokers, and each broker shall maintain his or her records and trust accounts separate from all other brokers.

(4) Business name. A broker shall not conduct business under any name other than the one in which the license is issued.

(5) Lending license prohibited. A broker shall not lend or permit the use of the broker's license, whether for compensation or not, to enable anyone licensed or unlicensed to, in fact, establish or carry on a business for which a real estate broker's license is required, wherein the broker does not actively manage and have full control. In like manner, a salesperson shall not use another person's broker's license, whether for compensation or not, to establish or carry on a business for which a broker's license is required, nor to manage and control the office, except as allowed by sections 54-2016(4) and 54-2039(1), Idaho Code.

History.

I.C. § 54-2040, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 15, p. 417;

am. 2002, ch. 220, § 8, p. 605; am. 2007, ch. 98, § 8, p. 283.

STATUTORY NOTES

Prior Laws.

Former § 54-2040 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2007 amendment, by ch. 98, in the section catchline, deleted "display of license" from the end; in subsection (1), in the third sentence, deleted "along with the fee for issuance of a new license certificate" from the end, rewrote the fourth sentence, which formerly read: "Upon receipt of the new license certificate or upon its effective date, whichever is later, the broker shall remove from public view any license certificate bearing the former business name or former location," deleted "and issuance of a new license certifi-

cate" following "commission" in the fifth sentence, and added the last two sentences; in subsection (4), deleted "and display of licenses" following "Business name" at the beginning, and deleted the last two sentences, which read: "The current license certificate for the broker and for each associate licensed with the broker shall be prominently displayed or available for public inspection in the office designated with the commission as the broker's main office location. No other location may be used as a main office location until proper notice is acknowledged by the commission"; and deleted subsection (6), which dealt with the return of a real estate license certificate.

54-2041. Trust accounts and entrusted property. — (1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker. For purposes of this section, moneys or property shall not be considered entrusted to the broker or to any licensee representing the broker when the parties to the transaction have instructed the broker or its licensees, in writing, to transfer such moneys or property to a third party, including, but not limited to, a title, an escrow or a trust company if upon transfer, the broker or its licensees have no right to exercise control over the safekeeping or disposition of said moneys or property.

(2) Unless otherwise instructed by the parties in writing to deposit

entrusted moneys on a later day, immediately upon receipt, the broker shall deposit entrusted moneys in a neutral, qualified trust fund account pursuant to section 54-2042, Idaho Code, and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker’s real estate trust fund account. Entrusted moneys shall not be commingled with moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) A licensed real estate broker shall not be responsible for depositing moneys into the broker’s real estate trust account, nor responsible for creating a real estate trust account with an approved depository as set forth in section 54-2042, Idaho Code, when the parties to the transaction have instructed the broker or its licensees, in writing, to transfer such moneys to a third party, including, but not limited to, a title, an escrow or a trust company. Provided however, a broker shall be responsible for maintaining a record of the time and date that said moneys or property was transferred from the broker to a third party.

(5) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved.

History.
I.C., § 54-2041, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 16, p. 417;

am. 2002, ch. 220, § 9, p. 605; am. 2005, ch. 107, § 12, p. 334; am. 2009, ch. 134, § 1, p. 415.

STATUTORY NOTES

Prior Laws.
Former § 54-2041 was repealed. See Prior Laws, § 54-2001.

Amendments.
The 2009 amendment, by ch. 134, added the last sentence in subsection (1); in subsection

(2), added “Unless otherwise instructed by the parties in writing to deposit entrusted moneys on a later day,” and inserted “pursuant to section 54-2042, Idaho Code”; and added subsection (4), redesignating former subsection (4) as subsection (5).

54-2042. Creation of noninterest-bearing trust accounts — Requirements. — A broker may establish one (1) or more real estate trust accounts but each account must meet all requirements of this chapter, including the following:

- (1) Each trust account must be established at an approved depository and must be noninterest-bearing, except as allowed in section 54-2043, Idaho Code, or as otherwise may be provided by law. Approved depositories are state or federally chartered banks and trust companies, state or federally chartered savings and loan associations, properly licensed title insurance companies, or an actively licensed attorney at law.
- (2) Each account must be identified by the term “real estate trust account,” on checks, deposit slips, and with the depository.
- (3) Each trust account must be established and maintained under the

licensed business name of the broker, and shall be under the full control of the broker.

(4) Each broker trust account must have a separate and complete set of records, which must consist of a monthly accounting, deposits, charges, and withdrawals or checks, even if the moneys are on deposit with a title company, attorney or other approved depository. The broker is responsible for ensuring that these separate account records are provided by the depository.

(5) Funds deposited in a real estate trust account must be subject to withdrawal on demand at the order or direction of the broker at all times, even if deposited with a title company or other approved depository.

(6) A commission-approved form giving notice of opening a trust account and giving authorization for the commission to inspect the account must be completed for each trust account, signed by the broker and an officer of the bank or depository and returned to the commission.

(7) No deposits to the trust account shall be made of funds that belong to the broker or real estate firm, except that the broker may deposit broker or firm funds for the purpose of opening and maintaining the account and for the payment of anticipated bank service charges for the trust account. In no event shall the balance of broker or firm funds in the account exceed three hundred dollars (\$300). Maintenance funds shall not be disbursed for any purpose other than to cover bank charges charged directly to the trust account by the bank.

(8) An entity not specified as an approved escrow depository in subsection (1) of this section, may be accepted and approved by the commission as an escrow depository upon disclosure of the following:

- (a) The details of the entity's financial structure;
- (b) The amount and terms of errors and omissions insurance and any bonding;
- (c) A copy of the entity's last audit and financial statement;
- (d) A copy of any license or certificate issued to the entity; and
- (e) Any other information that may help the commission make its determination.

History.

I.C., § 54-2042, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 17, p. 417; am. 2005, ch. 107, § 13, p. 334.

STATUTORY NOTES

Cross References.

Errors and omissions insurance, § 54-2013.

Prior Laws.

Former § 54-2042 was repealed. See Prior Laws, § 54-2001.

54-2043. Interest-bearing trust accounts. — The broker may deposit funds in a separate, interest-bearing trust account for a single transaction if directed in writing by both parties to the transaction, and only if the following additional requirements are met:

- (1) The interest-bearing trust account must be established in accordance

with all requirements in section 54-2042, Idaho Code. However, the interest-bearing trust account shall be created at an approved depository.

(2) The deposit shall be made in the name of the broker, as described above, and each such account shall contain only the funds relating to one (1) transaction.

(3) The interest-bearing trust account, when created for this purpose, must allow for withdrawal of the funds upon the broker's demand, unless all parties direct the broker in writing to do otherwise.

(4) There must be a written agreement signed by both the buyer and the seller stating who is to receive the interest accrued from the deposit. This agreement is to be retained by the responsible broker in the transaction file with a copy given to the buyer and the seller.

History.

I.C., § 54-2043, as added by 2000, ch. 285,
§ 3, p. 908; am. 2005, ch. 107, § 14, p. 334.

STATUTORY NOTES

Prior Laws.

Former § 54-2043 was repealed. See Prior
Laws, § 54-2001.

54-2044. Trust account recordkeeping — Format of records required. — In order that the financial interests of the consumers of Idaho be adequately protected, each designated broker is required to create and maintain the following records regarding any real estate trust account, and is required to reconcile and balance each trust account with all ledger records, the check register and the bank statement at least once each month. Any electronic recordkeeping system is required to have a generally accepted and adequate backup system in use at all times.

(1) Maintenance ledger record. A separate ledger card or record, herein called "ledgers," identified as "trust account maintenance fund" shall be initiated when the broker's or firm's funds are initially deposited into the trust account. These ledgers shall be filed at all times with the broker's current "open" ledgers of pending transactions. Additions or deductions to trust account maintenance funds shall be posted to the ledger records as soon as the broker is given notice of the deposit or deduction. The balance on this maintenance fund ledger shall be kept current at all times.

(2) Individual trust ledger records. An individual trust ledger shall be immediately created whenever a broker, or any licensed or unlicensed person representing the broker, receives earnest money or other consideration, even if the consideration will be deposited with, held by, paid directly to, transferred or delivered to a title company, other approved depository, or any other person, as directed in writing, and signed by both parties to the transaction. Receipt of consideration, for purposes of this chapter, occurs when the broker or any person representing the broker, takes physical possession of the consideration or assumes the responsibility to deliver or deposit it.

(3) When a broker deposits funds with another broker, an approved

depository, or directly to the seller or any other person, as directed in writing by both parties to the transaction, a ledger record must be created by the transferring broker, with a transaction number assigned. Upon transfer of funds or consideration, a receipt for such deposit shall be obtained and retained in the transaction files of the transferring broker. The receipt must show the name of the payee and date of transfer.

(4) Additional requirements for creating an individual trust ledger record are set forth in section 54-2045, Idaho Code. Individual trust ledger records must each be assigned a transaction number. In addition, each individual trust account ledger record created must contain:

- (a) The next chronological transaction number for each transaction;
- (b) The names of both parties to the transaction;
- (c) The location of the property;
- (d) The date of each deposit and disbursement;
- (e) The name of the payor or payee;
- (f) The amount and check number of each disbursement;
- (g) The amount and nature of the deposit;
- (h) The current balance; and
- (i) After the transaction is closed, each individual ledger record must show the final disposition of the transaction and funds.

A broker's trust account ledger records must be maintained with one (1) file, electronic or hard copy, for closed, terminated and rejected transactions, and a separate file for transactions pending but not closed. Ledger records shall be kept in alphabetical order or by transaction number. Ledger posting must be kept current at all times.

(5) Trust account checks. The broker shall maintain consecutively numbered checks for each trust account, which checks must:

- (a) Contain the broker's licensed business name and current business address; and
- (b) Be imprinted with the words "real estate trust account."

(6) Check register or journal. A check register or journal must be posted properly, maintained and kept current by the broker at all times even if funds are held at a title company or other approved depository. The register must itemize deposits and disbursements in consecutive order, and must also clearly show:

- (a) The date of the deposit or disbursement;
- (b) The payee or payor;
- (c) The amount and purpose of any deposits or disbursements;
- (d) The check number;
- (e) The transaction number; and
- (f) The current cash balance remaining in that trust account.

(7) Duplicate bank deposit record. For each trust account, the broker shall maintain, in hard copy, a duplicate bank deposit record, which shall be imprinted with the broker's business name and the words, "real estate trust account." Each deposit record shall state:

- (a) The name of the person or firm placing the money with the broker's office;
- (b) The date of the deposit; and

(c) The transaction number. The duplicate deposit record shall be retained in the bank deposit records in proper chronological sequence and shall be date stamped by the bank or the bank deposit receipt shall be attached to the duplicate deposit record in the deposit records.

(8) Real estate trust account checks. For each trust account, the broker shall maintain a set of consecutively numbered checks, which shall be imprinted with the broker's business name and address and the words "real estate trust account." Any check drawn on such a trust account shall be identified by a transaction number noted on the face of the check. Any voided trust account check shall be marked "VOID" and retained in numerical sequence with the other checks for the banking month.

History.

I.C. § 54-2044, as added by 2000, ch. 285,
§ 3, p. 908; am. 2007, ch. 98, § 9, p. 283.

STATUTORY NOTES

Prior Laws.

Former § 54-2044 was repealed. See Prior Laws, § 54-2001.

tuted "shall be kept in alphabetical order or by transaction number" for "shall be kept in order by transaction number" in the last paragraph in subsection (4).

Amendments.

The 2007 amendment, by ch. 98, substi-

54-2045. Trust account deposits and receipt of consideration. — Except as otherwise provided in this section, all entrusted funds received by a broker in connection with a regulated real estate transaction, including, but not limited to, earnest money, shall be deposited into a real estate trust account maintained by the broker at an approved depository. In addition, all earnest money, option money, promissory notes, tangible personal property and any other consideration received by a broker, regardless of form, must be accounted for upon receipt and in the following manner:

(1) Time of deposit. All moneys received by a broker for another in a real estate transaction are to be deposited on or before the banking day immediately following the receipt day of such funds, unless written instructions signed by the party or parties having an interest in the funds direct the broker to do otherwise.

(2) Checks held in uncashed form. A ledger record must also be created when the broker or associate receives a check to be held for later deposit. However, such a check must be accompanied by written instructions in the purchase and sale agreement or offer to withhold deposit until a time certain, such as acceptance of the offer by the seller.

(3) Consideration returned before deposit. A ledger record must also be created even if the consideration received by a broker or salesperson is to be returned before it has been deposited or otherwise transferred. A written and dated notation must be placed on both the purchase and sale agreement, offer or other document dealing with the consideration, and on the ledger record. No consideration is to be returned without the knowledge and consent of the broker.

(4) Consideration received by sales associate. All consideration, including

cash, checks held in uncashed form and promissory notes, received by a sales associate in connection with a real estate transaction shall be immediately delivered to the broker or the broker's office.

History.

I.C., § 54-2045, as added by 2000, ch. 285,
§ 3, p. 908; am. 2007, ch. 98, § 10, p. 283.

STATUTORY NOTES**Prior Laws.**

Former § 54-2045 was repealed. See Prior Laws, § 54-2001.

introductory paragraph, deleted "located in the state of Idaho" from the end of the first sentence; and in subsection (3), deleted "properly" preceding "transferred."

Amendments.

The 2007 amendment, by ch. 98, in the

54-2046. Trust account disbursements. — The broker who holds entrusted funds or like payments in lieu of cash received in a regulated real estate transaction is fully responsible for all such funds until a full accounting has been made to the parties involved. All cash or like payments in lieu of cash must be disbursed from the real estate trust account only in accordance with this section. Failure to comply with this section is a violation of license law and will subject the broker to discipline.

(1) Written authorization required. No disbursements shall be made without a written, signed authorization by the parties to the transaction or an order of the court. Written and signed instructions from parties to the transaction may be in the purchase and sale agreement or in a separate document.

(2) Disbursements in advance of closing. No disbursements shall be made in advance of closing or before the happening of a condition set forth in the purchase and sale agreement or other agreement in a regulated real estate transaction to the seller, closing agent or any other person without the required written and signed authorization.

(3) Disbursements to escrow agent. When set forth in the purchase and sale agreement that funds are to be disbursed to the person or company named as the escrow closing agent or agency, such disbursement shall be made to the person, company, agent or agency on or before the day of closing, and a receipt for such disbursement shall be retained in the broker's transaction file.

(4) Withdrawal of broker's commission. No disbursement of any portion of the broker's commission shall take place without prior written, signed authorization from the buyer and seller or until copies of the closing statements, signed by the buyer and seller, have been delivered to the broker and until the buyer or seller has been paid the amount due as determined by the closing statement.

(5) Provision for forfeited earnest money. The purchase and sale agreement must include a provision for division of moneys taken as earnest money when the transaction is not closed and such moneys are retained by any person as forfeited payment.

History.

I.C., § 54-2046, as added by 2000, ch. 285,
§ 3, p. 908; am. 2001, ch. 123, § 18, p. 417.

STATUTORY NOTES**Prior Laws.**

Former § 54-2046 was repealed. See Prior
Laws, § 54-2001.

54-2047. Disputed earnest money. — (1) Any time more than one (1) party to a transaction makes demand on funds or other consideration for which the broker is responsible, such as, but not limited to, earnest money deposits, the broker shall:

- (a) Notify each party, in writing, of the demand of the other party; and
- (b) Keep all parties to the transaction informed of any actions by the broker regarding the disputed funds or other consideration, including retention of the funds by the broker until the dispute is properly resolved.

(2) The broker may reasonably rely on the terms of the purchase and sale agreement or other written documents signed by both parties to determine how to disburse the disputed money and may, at the broker's own discretion, make such disbursement. Discretionary disbursement by the broker based on a reasonable review of the known facts is not a violation of license law, but may subject the broker to civil liability.

(3) If the broker does not believe it is reasonably possible to disburse the disputed funds, the broker may hold the funds until ordered by a court of proper jurisdiction to make a disbursement. The broker shall give all parties written notice of any decision to hold the funds pending a court order for disbursement.

History.

I.C., § 54-2047, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2047 was repealed. See Prior
Laws, § 54-2001.

54-2048. Responsible broker for the transaction — Duties and recordkeeping. — The “responsible broker,” as referred to in this section, shall be responsible to the commission for the transaction, transaction records, the funds and closing in accordance with the requirements of this chapter. The broker who lists and sells any real property shall be deemed the responsible broker in the transaction. In the case of a cooperative sale, the broker who holds entrusted funds in a real estate trust account while the transaction is pending, or who delivers or transfers the funds to the closing agency or any authorized party other than the cooperating broker in the transaction, shall be deemed the broker responsible for the transaction. The responsible broker shall:

- (1) Ensure the correctness and delivery of detailed closing statements

which accurately reflect all receipts and disbursements for their respective accounts to both the buyer and seller in a transaction, even if the closing is completed by a real estate escrow closing agent, title company or other authorized third party and regardless of the responsible broker's agent or nonagent relationship to the buyer or seller.

(2) Show proof of delivery of the closing statement to the buyer and seller by their signatures on copies of such closing statements which shall be retained in the broker's transaction file. When signatures of the parties cannot be obtained, a copy of the closing statement transmittal letter, sent by certified mail, return receipt requested, or a written certification of delivery signed by an officer of the escrow closing agency, shall be retained in the broker's transaction files.

(3) Create and maintain, for the retention period required in section 54-2049, Idaho Code, a transaction file containing the following documents, as applicable. For all pending, closed or fallen transactions, the original or a true and correct copy of:

(a) Signed closing statements, if applicable;

(b) Written and signed brokerage representation agreements, if any. A responsible broker who is representing both the seller and the buyer in a transaction shall retain properly executed brokerage representation agreements in the transaction file, and, if appropriate to the transaction, a properly executed "consent to limited dual representation" statement. A responsible broker who has a signed brokerage representation agreement with only one (1) party to the transaction, either buyer or seller, must only retain that one (1) agreement in the transaction file;

(c) All offers accepted, countered or rejected, which must each be retained in the manner required in section 54-2049, Idaho Code;

(d) All offers presented to the seller and not accepted by that seller shall be clearly marked and dated as rejected. The original or a true and correct copy of all rejected offers must be retained in the files of the selling broker for the statutory records retention period in section 54-2049, Idaho Code.

History.

I.C., § 54-2048, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Prior Laws.

Former § 54-2048 was repealed. See Prior
Laws, § 54-2001.

54-2049. Record retention schedules. — All records required in this chapter to be kept and maintained by a real estate broker, including trust account and financial records, transaction files and other records are to be kept in the broker's files according to this section. The following records must be kept by a broker for three (3) calendar years after the year in which the event occurred, the transaction closed, all funds were disbursed, or the agreement and any written extension expired:

(1) The original or true copy of all accepted, countered or rejected offers;

- (2) Listing or buyer brokerage representation agreements and “consent to limited dual representation” forms;
- (3) Transaction files and the contents required in section 54-2048(3), Idaho Code;
- (4) Trust account ledger records; and
- (5) All trust account reconciliation records, as defined in this chapter.

History.

I.C., § 54-2049, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Prior Laws.**

Former § 54-2049 was repealed. See Prior
Laws, § 54-2001.

54-2050. Brokerage representation agreements — Required elements. — All real estate brokerage representation agreements, whether with a buyer or seller, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions:

(1) Seller representation agreements. Each seller representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

- (a) Conspicuous and definite beginning and expiration dates;
- (b) A description of the property to be bought or sold which sufficiently identifies the property so as to evidence an understanding of the parties as to the location of the real property. Nothing in this section shall be construed to require a legal description, nor a metes and bounds description of the property. Provided further, a representation agreement shall not be held invalid for lack of a legal description or a metes and bounds description;
- (c) Price and terms;
- (d) All fees or commissions; and
- (e) The signature of the owner of the real estate or the owner’s legal, appointed and duly qualified representative, and the date of such signature.

(2) Buyer representation agreements. Each buyer representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

- (a) Conspicuous and definite beginning and expiration dates;
- (b) All financial obligations of the buyer or prospective buyer, if any, including, but not limited to, fees or commissions;
- (c) The manner in which any fee or commission will be paid to the broker; and
- (d) Appropriate signatures and their dates.

(3) Prohibited provisions and exceptions — Automatic renewal clauses. No buyer or seller representation agreement shall contain a provision requiring the party signing the agreement to notify the broker of the party’s intention to cancel the agreement after the definite expiration date, unless

the representation agreement states that it is completely nonexclusive and it contains no financial obligation, fee or commission due from the party signing the agreement.

(4) Copies required. A broker or salesperson who obtains a written brokerage representation agreement of any kind shall, at the time of securing such agreement, give the person or persons signing such agreement, a legible, signed, true and correct copy thereof. To the extent the parties have agreed in writing, copies that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct.

(5) Electronically generated agreements. To the extent the parties have agreed in writing, brokerage representation agreements with a buyer or seller that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct and enforceable as originals.

History.

I.C., § 54-2050, as added by 2000, ch. 285,

§ 3, p. 908; am. 2001, ch. 123, § 19, p. 417; am. 2009, ch. 135, § 1, p. 416.

STATUTORY NOTES

Prior Laws.

Former § 54-2050 was repealed. See Prior Laws, § 54-2001.

subsection (1)(b), which formerly read: "A legally enforceable description of the property."

Amendments.

The 2009 amendment, by ch. 135, rewrote

JUDICIAL DECISIONS

ANALYSIS

Description of property.

Written agreement.

Description of Property.

Description in an exclusive seller representation agreement, which only contained the home address of the seller and the appropriate acreage being sold, was insufficient to meet the statutory requirements of subsection (1)(b). *Garner v. Bartschi*, 139 Idaho 430, 80 P.3d 1031 (2003) (See 2009 amendment and next case note).

Under § 9-508 and this section, commission agreements do not have to include property descriptions that meet the stringent requirements of § 9-503. Rather, for purposes of a real estate brokerage agreement, a property description is sufficient where it is shown that there is no misunderstanding between the property owner and the broker as to the property to be offered for sale. In addition,

parol evidence may be used to identify the property that is the subject of the agreement, provided it does not vary, add to, or subtract from the agreement the parties intended to make. *Callies v. O'Neal*, 147 Idaho 841, 216 P.3d 130 (2009).

Written Agreement.

When read together, this section and §§ 54-2002, 54-2004, 54-2084, and 54-2087 clearly indicate that any person who undertakes, for expected compensation, to represent another by directly or indirectly taking part in procuring prospects, or negotiating a transaction, to purchase real property has no enforceable agreement unless the agreement is in writing. *Johnson v. McPhee*, 147 Idaho 455, 210 P.3d 563 (Ct. App. 2009).

54-2051. Offers to purchase. — (1) A broker or sales associate shall, as promptly as practicable, tender to the seller every written offer to purchase obtained on the real estate involved, up until time of closing. A

purchase and sale agreement signed by the prospective buyer shall be deemed in all respects an offer to purchase.

(2) Immediately upon receiving any offer to purchase signed and dated by the buyer and any consideration, a broker or salesperson shall provide a copy of the offer to purchase to the buyer as a receipt.

(3) Upon obtaining a properly signed and dated acceptance of an offer to purchase, the broker or sales associate shall promptly deliver true and legible copies of such accepted offer to both the buyer and the seller.

(4) The broker or sales associate shall make certain that all offers to purchase real property or any interest therein are in writing and contain all of the following specific terms, provisions and statements:

(a) All terms and conditions of the real estate transaction as directed by the buyer or seller;

(b) The actual form and amount of the consideration received as earnest money;

(c) The name of the responsible broker in the transaction, as defined in section 54-2048, Idaho Code;

(d) The “representation confirmation” statement required in section 54-2085(4), Idaho Code, and, only if applicable to the transaction, the “consent to limited dual representation” as required in section 54-2088, Idaho Code;

(e) A provision for division of earnest money retained by any person as forfeited payment should the transaction not close;

(f) All appropriate signatures; and

(g) A legal description of the property.

(5) All changes made to any offer to purchase or other real estate purchase agreement shall be initialed and dated by the parties to the transaction.

History.

I.C., § 54-2051, as added by 2000, ch. 285,
§ 3, p. 908; am. 2007, ch. 98, § 11, p. 283.

STATUTORY NOTES

Prior Laws.

Former § 54-2051 was repealed. See Prior Laws, § 54-2001.

Amendments.

The 2007 amendment, by ch. 98, deleted

“and shall obtain the signature of the seller or seller’s agent verifying time and date such offer was received” from the end of the first sentence in subsection (1).

54-2052. Electronically generated agreements. — To the extent the parties to the transaction have agreed in writing offers to purchase, counteroffers and acceptances may be electronically generated or transmitted, faxed or delivered in another method [and] shall be deemed true and correct and enforceable as originals.

History.

I.C., § 54-2052, as added by 2000, ch. 285,
§ 3, p. 908; am. 2001, ch. 123, § 20, p. 417.

STATUTORY NOTES

Prior Laws.

Former § 54-2052 was repealed. See Prior Laws, § 54-2001.

Compiler's Notes.

The bracketed insertion was added by the compiler to make the section more readable.

54-2053. Advertising. — (1) Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any type of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.

(2) All advertising of listed property shall contain the broker's licensed business name. A new business name shall not be used or shown in advertising unless and until a proper notice of change in the business name has been approved by the commission.

(3) All advertising by licensed branch offices shall contain the broker's licensed business name.

(4) No advertising shall provide any information to the public or to prospective customers or clients which is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.

History.

I.C., § 54-2053, as added by 2000, ch. 285, § 3, p. 908.

STATUTORY NOTES

Prior Laws.

Former § 54-2053 was repealed. See Prior Laws, § 54-2001.

54-2054. Compensation, commissions and fees — Prohibited conduct. — (1) Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to a legal business entity, all of whose shareholders, members or other persons having a similar ownership interest are active real estate licensees. An Idaho licensee may pay any part or

share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter, or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any person who is not licensed in Idaho or any state or jurisdiction, made for the purpose of inducing such unlicensed person to secure prospects to buy, sell, option, or otherwise dispose of an interest in real property shall be considered to be splitting fees with an unlicensed person, and is prohibited.

(4) Interference with real estate brokerage agreement prohibited. It shall be unlawful for any person, licensed or unlicensed, to interfere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer shall not be considered a violation of this subsection so long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a broker and client.

(5) Double contracts prohibited. No licensed broker or salesperson shall use, propose the use of, agree to the use of, or knowingly permit the use of a double contract, as defined in section 54-2004, Idaho Code, in connection with any regulated real estate transaction. Such conduct by a licensee shall be deemed flagrant misconduct and dishonorable and dishonest dealing and shall subject the licensee to disciplinary action by the commission.

(6) Kickbacks and rebates prohibited. No licensed real estate broker or salesperson shall receive a kickback or rebate for directing any transaction to any individual for financing. A licensee shall not receive a kickback or unearned fee for directing any transaction to any lending institution, escrow or title company, as those practices are defined and prohibited by the real estate settlement procedures act. However, a licensee legally receiving any fee or rebate from any person providing direct services to either the buyer or the seller in connection with a regulated real estate transaction is required to disclose the licensee's intent to receive such fee, rebate or compensation in writing to all parties to the transaction prior to closing.

(7) Compensation from more than one party. No licensed real estate broker or salesperson shall charge or accept compensation from more than one (1) party in any one (1) transaction, without first making full disclosure in writing of the broker's intent to do so, to all parties involved in the transaction.

(8) After-the-fact referral fees prohibited. It shall be unlawful for any person to solicit or request a referral fee or similar payment from a licensed Idaho real estate broker or sales associate, for the referral of a buyer or seller in connection with a regulated real estate transaction, unless the person seeking the referral fee has reasonable cause. "Reasonable cause" shall not exist unless:

(a) The person seeking the referral fee has a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment; and

(b) The contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction. It shall be unlawful for any person including, but not limited to, a relocation company or company with a relocation policy or benefits, to directly or indirectly threaten to or actually reduce or withhold promised or expected employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon a broker's participation in payment of a referral fee or other fee.

(9) All fees must be paid through broker. No sales associate shall accept any commission, compensation or fee for the performance of any acts requiring a real estate license from any person except the real estate broker with whom the sales associate is licensed. However, if authorized by the broker, a sales associate may pay all or any portion of the accepted commission, compensation or fee to any other sales associate who is licensed with the same broker. A broker may pay a former sales associate for services performed while the sales associate was actively licensed with that broker, regardless of the former sales associate's license status at the time the commission or fee is actually paid.

History.

I.C., § 54-2054, as added by 2000, ch. 285,
§ 3, p. 908; am. 2000, ch. 261, § 1, p. 732; am.

2002, ch. 220, § 10, p. 605; am. 2003, ch. 65,
§ 6, p. 211.

STATUTORY NOTES

Federal References.

The real estate settlement procedures act,

referred to in subsection (6), is codified as 12
U.S.C.S. § 2601 et seq.

54-2055. Licensees dealing with their own property. — (1) Any actively licensed Idaho broker, sales associate, or legal business entity shall comply with this entire chapter when that licensee is buying, selling or otherwise acquiring or disposing of the licensee's own interest in real property in a regulated real estate transaction.

(2) A licensee shall disclose in writing to any buyer or seller no later than at the time of presentation of the purchase and sale agreement that the licensee holds an active Idaho real estate license, if the licensee directly, indirectly, or through a third party, sells or purchases an interest in real property for personal use or any other purpose; or acquires or intends to acquire any interest in real property or any option to purchase real property.

(3) Each actively licensed person buying or selling real property or any interest therein, in a regulated real estate transaction, must conduct the transaction through the broker with whom he is licensed, whether or not the property is listed.

History.

§ 3, p. 908; am. 2003, ch. 65, § 7, p. 211; am. I.C., § 54-2055, as added by 2000, ch. 285, 2010, ch. 217, § 4, p. 485.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 217, inserted the purchase and sale agreement” in subsection (2).
“no later than at the time of presentation of

54-2056. Terminating or changing licensed business relationships. — (1) Termination of licensed association. A sales associate who terminates his licensed association with a broker shall provide the broker written notice of the termination no later than three (3) business days after the effective date. A broker who terminates the licensed association of a sales associate shall provide the associate written notice of the termination no later than three (3) business days after the effective date. A licensee's written notice to the commission does not relieve him of the duty to provide written notice to the other licensee that he is terminating the licensed association.

(2) New association. The broker shall submit a written application, in the form and manner approved by the commission, for each sales associate licensing with the broker.

(3) Termination for cause. Any broker who terminates the association of a sales associate for the violation of any of the provisions of sections 54-2059 through 54-2065, Idaho Code, shall, within ten (10) business days of the termination, notify the commission, in writing, of the termination and the facts giving rise to the termination.

(4) Closing a branch office. Immediately upon closing a branch office, the broker shall provide the commission written notice of the closure advising of the new status of all licensees licensed with the closed branch. The broker shall remove from public view any license certificates for the branch office.

(5) Property of the broker. Upon termination of the business relationship as a sales associate licensed under a broker, the sales associate shall immediately turn over to the broker all listing information and listing contracts, keys, purchase and sale agreements and similar contracts, buyer brokerage information and contracts, and other property belonging to the broker. A sales associate shall not engage in any practice or conduct, directly or indirectly, which encourages, entices or induces clients of the broker to terminate any legal business relationship with the broker unless he first obtains written permission of the broker.

(6) Location of trust accounts and file records. When an actively licensed broker changes to a license status other than that of a designated broker, that individual must notify the commission in writing of the location of all trust accounts and transaction file records which the broker was responsible for during the term of licensure as a designated broker. These records shall be available to the commission for three (3) years following the year in which each transaction was closed.

(7) Terminating relationships between a broker and a sole proprietorship owned by a person other than the broker. When a broker for a sole proprietorship, owned by a person other than the broker, terminates an

association with the owner, all records and trust account funds shall become the property of, and be maintained and disbursed by, the terminating broker in accordance with this chapter and applicable rules promulgated thereunder. The terminating broker shall deliver, upon request made in writing by the clients and the new broker of that sole proprietorship, such records and trust account funds pertaining to that client, to the new broker who shall thereafter have the responsibility for preservation and disbursement, in accordance with this chapter and applicable rules promulgated thereunder.

History.

I.C., § 54-2056, as added by 2000, ch. 285, § 3, p. 908; am. 2001, ch. 123, § 21, p. 417;

am. 2002, ch. 220, § 11, p. 605; am. 2005, ch. 107, § 15, p. 334; am. 2007, ch. 98, § 12, p. 283.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 98, deleted the former last sentence in subsection (1), which read: "Upon written notice of the termination of a sales associate's licensed business association with a broker, whether by the broker or by the sales associate, the broker shall re-

move from public view the former associate's license certificate"; and rewrote the last sentence in subsection (4), which formerly read: "The broker shall immediately remove from public view the branch office license certificate and the license certificates of all licensees licensed in the branch office."

54-2057. Death or incapacity of a designated broker. — (1) Legal business entities. Upon the death or incapacity of a designated broker for a legal business entity licensed as a real estate brokerage company in Idaho, the licensed entity shall appoint and designate a qualified individual as designated broker in the manner and within the time required in section 54-2039, Idaho Code, or shall cease to be licensed.

(2) Sole proprietorships. Upon the death or incapacity of a sole proprietor broker, the commission may issue a limited authorization for an executor, administrator, conservator, personal representative, court-appointed guardian, or some other person or agency to close out the pending transactions on behalf of the deceased or incapacitated broker, and only in accordance with the provisions of this section. The person given temporary authority shall close out the affairs of the deceased or incapacitated sole proprietor broker by taking the following actions:

(a) Termination of listings and buyer brokerage agreements. Termination of all listings and buyer brokerage agreements in which there are not outstanding offers or earnest money receipts.

(b) Completion of negotiations. Completion of all negotiations between buyers and sellers on transactions in which an offer to purchase has been written or received.

(c) Accounting for moneys. Depositing and withdrawing moneys from the real estate trust account in connection with completion of all transactions still pending at the time of death of a sole proprietor broker.

(d) Commissions. Prompt payment of all real estate commissions owing after closing of all transactions, both to the decedent broker's duly appointed personal representative and to sales associates of the deceased broker or participating brokers entitled to commissions resulting from the transactions.

History.

I.C., § 54-2057, as added by 2000, ch. 285,
§ 3, p. 908.

54-2058. Authority to investigate and discipline. — (1) General authority to investigate. The commission may investigate the action of any person engaged in the business or acting in the capacity of real estate broker or salesperson in this state, or any person believed to have acted as a real estate broker or salesperson without a license in violation of section 54-2002, Idaho Code. Upon receipt of a written complaint from anyone who claims to have been injured or defrauded as a result of such action, or upon information received by the executive director, the executive director shall perform an investigation of the facts alleged against such real estate broker or salesperson or such unlicensed person. Prior to the initiation of any proceedings for the revocation or suspension of a license, or for such other disciplinary actions as set forth in section 54-2059, Idaho Code, the executive director shall transmit to the commission a report, in writing, signed by the executive director, setting forth the facts alleged against such real estate broker or salesperson or unlicensed person. Upon receiving such report, the commission shall make an examination of all the facts and circumstances connected with such report. If the facts set forth in the report are deemed insufficient by the commission, no further action shall be taken, unless the executive director resubmits the report with additional facts supporting the filing of an administrative complaint. Should the commission deem that the facts set forth in the report are sufficient to proceed with a formal action, the commission shall authorize the filing of an administrative complaint against such person.

(2) Audits. The commission or its duly authorized representative is vested with the authority to conduct periodic inspections, surveys and audits of the transaction records and real estate trust accounts of all Idaho licensed designated brokers. Any transaction records or real estate trust account records located outside the state of Idaho shall promptly be made available to the commission upon request at the licensee's own cost and at the location or in the manner requested by the commission. If the analysis of a broker's real estate trust account indicates a deficiency or any irregularity which cannot be resolved between the commission and the broker, the commission may order a complete audit of the trust account by a certified public accountant at the broker's expense.

(3) The commission also has the authority to investigate the action of any Idaho licensee as provided in this section. The licensee or broker shall answer all reasonable investigative questions of the commission, and must make available, promptly upon request, any and all records to the commission at the licensee's own cost and at the location or in the manner requested by the commission.

History.

I.C., § 54-2058, as added by 2000, ch. 285,
§ 3, p. 908; am. 2001, ch. 123, § 22, p. 417;

am. 2002, ch. 116, § 1, p. 330; am. 2011, ch.
108, § 3, p. 275.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 108, deleted the former second paragraph in subsection (1), which read: "A person is acting 'within the state of Idaho' if that person is dealing with any interest in real property or a business

opportunity involving an interest in real property, which is situated in this state, or is conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho."

54-2059. Disciplinary powers — Revocation, suspension or other disciplinary action. — (1) The commission may temporarily suspend or permanently revoke licenses issued under the provisions of this chapter, issue a formal reprimand and impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000), and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any licensee who is found to have violated any section of the Idaho Code, the commission's administrative rules or any order of the commission. The executive director may issue informal letters of reprimand to licensees without civil penalty or cost assessment.

The commission may impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any person who is found, through a court or administrative proceeding, to have acted without a license in violation of section 54-2002, Idaho Code. The civil penalty provisions of this section are in addition to and not in lieu of any other actions or criminal penalties for acting as a broker or salesperson without a license which might be imposed by other sections of this chapter or Idaho law.

The commission may also accept, on such conditions as it may prescribe, or reject any offer to voluntarily terminate the license of a person whose activity is under investigation or against whom a formal complaint has been filed.

(2) If the commission suspends or revokes a license, or imposes a civil penalty, or assesses costs and attorney's fees, the commission may withhold execution of the suspension, revocation or civil penalty, or costs and attorney's fees on such terms and for such time as it may prescribe.

(3) If any amounts assessed against a defendant by final order of the commission become otherwise uncollectible or payment is in default, and only if all the defendant's rights to appeal have passed, the commission may then proceed to district court and seek to enforce collection through judgment and execution.

(4) All civil penalties, costs, and attorney's fees collected by the commission under this chapter shall be deposited in the state treasury to the credit of the special real estate fund established by section 54-2021, Idaho Code. Any amounts of civil penalties so collected, deposited and credited shall be expended for exclusive use in developing and delivering real estate education to benefit Idaho real estate licensees.

History.

I.C., § 54-2059, as added by 2000, ch. 285, § 3, p. 908; am. 2004, ch. 121, § 1, p. 409.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Suspension of License.

The fact that no harm came to the clients involved, and that restitution was subsequently made by the former broker, did not rule out suspension of a broker's license; and, since the real estate commission had the

power to revoke the broker's license for violation of its regulations, a five-month suspension was not an abuse of discretion which would require reversal. *Staff of Idaho Real Estate Comm'n v. Parkinson*, 100 Idaho 96, 593 P.2d 1000 (1979).

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, *Brokers*, § 29 seq.

A.L.R. — Suspension or revocation of real estate broker's license on ground of discrimination. 42 A.L.R.3d 1099.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel carrying out duties. 68 A.L.R.3d 530.

Revocation or suspension of real estate broker's license for conduct not connected with business as broker. 22 A.L.R.4th 136.

Grounds for revocation or suspension of license of real-estate broker or salesperson. 7 A.L.R.5th 474.

54-2060. Grounds for disciplinary action. — A person found guilty of misconduct while performing or attempting to perform any act requiring an Idaho real estate broker or salesperson's license, regardless of whether the act was for the person's own account or in his capacity as broker or salesperson, shall be subject to disciplinary action by the commission. The following acts shall constitute misconduct within the meaning of this section:

- (1) Making fraudulent misrepresentations;
- (2) Engaging in a continued or flagrant course of misrepresentation or making of false promises, whether done personally or through agents or salespersons;
- (3) Failure to account for or remit any property, real or personal, or moneys coming into the person's possession which belong to another;
- (4) Failure to keep adequate records of all property transactions in which the person acts in the capacity of real estate broker or salesperson;
- (5) Failure or refusal, upon lawful demand, to disclose any information within the person's knowledge, or to produce any documents, books or records in the person's possession for inspection by the commission or its authorized representative;
- (6) Acting as a real estate broker or salesperson under an assumed name;
- (7) Employment of fraud, deception, misrepresentation, misstatement or any unlawful means in applying for or securing a license to act as a real estate broker or salesperson in the state of Idaho;
- (8) Using, proposing to use, or agreeing to use a "double contract" as prohibited in section 54-2054(5), Idaho Code;
- (9) Seeking or receiving a "kickback" or rebate prohibited in section 54-2054(6), Idaho Code;

(10) Violation of any provision of sections 54-2001 through 54-2097, Idaho Code, or any administrative rule made or promulgated by the commission or any final order of the commission;

(11) Any other conduct whether of the same or a different character than hereinabove specified which constitutes dishonest or dishonorable dealings;

(12) Gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

History.

I.C., § 54-2060, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2060 was amended and re-numbered as § 54-2082.

54-2061. Additional grounds for disciplinary action — Court actions — Licensee to report to commission. — (1) The commission may also take disciplinary action against a licensee including, but not limited to, suspension or revocation of a license, where, in a court of competent jurisdiction, the licensee:

(a) Has been convicted of a felony, or has been convicted of a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing or which otherwise demonstrates the licensee's lack of trustworthiness to engage in the real estate business;

(b) Has been declared to lack capacity or to be incompetent or under an infirmity, for the duration of such declaration only;

(c) Has a judgment entered against the licensee in a civil action upon grounds of fraud, misrepresentation, deceit or gross negligence with reference to a real estate-related transaction.

(2) The court's record of conviction, order determining legal competency, or the order entering judgment in a civil case, or certified copies thereof, shall be prima facie evidence of a conviction, or the court's action.

(3) A licensee who is convicted, declared legally incompetent, or who has a judgment entered against him in a civil action as described in subsection (1) of this section, shall, within twenty (20) days of such conviction, declaration or judgment, forward to the commission a copy of the legal document evidencing the same.

History.

I.C., § 54-2061, as added by 2000, ch. 285,
§ 3, p. 908; am. 2001, ch. 123, § 23, p. 417.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2061 was amended and re-numbered as § 54-2083.

54-2062. Additional grounds for disciplinary action — Other administrative actions — Licensee to report to commission. —

(1) The commission may also take any disciplinary action, including, but not limited to, suspension or revocation of a license where the licensee:

- (a) Has an order or determination of debarment, suspension, or any limitation on participation in government loan programs issued against the licensee for misconduct; or
- (b) Has a real estate or other professional license suspended or revoked for a disciplinary violation involving fraud, misrepresentation, or dishonest or dishonorable dealings. A certified copy of the order of the administrative agency in the other jurisdiction shall be prima facie evidence of the suspension or revocation.

(2) A licensee against whom a final administrative action has been taken, as described in subsection (1) of this section, shall, within twenty (20) days of such action, forward to the commission a copy of the legal document evidencing the same.

History. § 3, p. 908; am. 2001, ch. 123, § 24, p. 417;
I.C., § 54-2062, as added by 2000, ch. 285, am. 2005, ch. 107, § 16, p. 334.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2062 was amended and re-numbered as § 54-2084.

54-2063. Disciplinary procedure and review of agency action. —

All disciplinary actions under this chapter and all rights of review or appeal are governed by chapter 52, title 67, Idaho Code, and the rules of practice and procedure of the Idaho real estate commission.

History.
I.C., § 54-2063, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2063 was amended and re-numbered as § 54-2085.

54-2064. Proof of complaint — Prosecution by county prosecuting attorney. —

The commission may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction. It shall be the duty of the prosecuting attorney of each county in the state to prosecute all violations of the provisions of this chapter in their respective counties in which the violations occur.

History.
I.C., § 54-2064, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2064 was amended and re-numbered as § 54-2086.

54-2065. Penalty for acting as a broker or salesperson without license. — Any person acting as a real estate broker or real estate salesperson within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and, upon conviction thereof, if a natural person, be punished by a fine of not to exceed five thousand dollars (\$5,000), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment in the discretion of the court; or if a limited liability company or corporation, by a fine of not to exceed ten thousand dollars (\$10,000). Additionally, the court may assess a civil penalty against a natural person in an amount not to exceed five thousand dollars (\$5,000), and against a limited liability company or corporation, in an amount not to exceed ten thousand dollars (\$10,000). All civil penalties shall be credited to the special real estate fund.

History.

I.C., § 54-2065, as added by 2000, ch. 285, § 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2065 was amended and re-numbered as § 54-2087.

JUDICIAL DECISIONS

ANALYSIS

Applicability.

Real estate developers.

Applicability.

State licensing statutes provide penalties for acting in the capacity of a broker or salesperson without a license; but the statutes fail to evidence an intent on the part of the state legislature to void real estate development contracts which may be in contravention of their terms. *Gugino v. Kastera, LLC* (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

persuade land owners to sell their undeveloped property to a second developer as part of a joint development agreement, no license was required of the first developer under § 54-2002 or this section, because the two developers were acting in concert under a joint venture, an exception to the license requirement in § 54-2003(1)(b). *Gugino v. Kastera, LLC* (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

Real Estate Developers.

Where a real estate developer agreed to

DECISIONS UNDER PRIOR LAW

ANALYSIS

Attempt punishable.

What constitutes offense.

Attempt Punishable.

If only attempt is shown, a conviction of attempting to act as unlicensed realty broker is proper. *State v. Johnson*, 54 Idaho 431, 32 P.2d 1023 (1934).

What Constitutes Offense.

Under this and cognate sections, the offense is not offering to sell realty, but is acting as a realty broker. *State v. Johnson*, 54 Idaho 431, 32 P.2d 1023 (1934).

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Brokers, § 17.
A.L.R. — Right of attorney, as such, to act

or become licensed to act as real-estate broker. 23 A.L.R.4th 230.

54-2066. Injunctive relief. — The commission is hereby authorized to institute injunction proceedings in the district court of competent jurisdiction, pursuant to the Idaho rules of civil procedure, for cause shown, to restrain any person or persons from violating any provision of this chapter regardless of whether or not there exists an adequate remedy at law.

History.

I.C., § 54-2066, as added by 2000, ch. 285,
 § 3, p. 908.

STATUTORY NOTES**Cross References.**

Injunctions, Idaho R. Civ. P. 65(a) et seq.

Compiler's Notes.

Former § 54-2066 was amended and re-numbered as § 54-2088.

54-2067. Cease and desist orders. — The commission is authorized to order that any person violating any provision of this chapter cease and desist such activity immediately. Violation of the cease and desist order shall be a violation of this chapter and shall subject the person to any and all remedies available to the commission in this or other chapters of the Idaho Code.

History.

I.C., § 54-2067, as added by 2000, ch. 285,
 § 3, p. 908.

STATUTORY NOTES**Compiler's Notes.**

Former § 54-2067 was amended and re-numbered as § 54-2089.

54-2068. Witnesses — Depositions — Fees — Subpoenas. —
 (1) The commission, or any member thereof, the executive director of the commission, or such other person so designated by the commission by rule, shall have power to administer oaths, certify to all official acts, issue subpoenas for attendance of witnesses and the production of books and papers, take the testimony of any person by deposition in the manner prescribed for in the rules of procedure of the district court of this state, in civil cases, in any investigation or hearing in any part of the state.

(2) Each witness who appears pursuant to a subpoena shall receive for his attendance the fees and mileage allowed to a witness in civil cases in the district court. Witness fees shall be paid by the party at whose request the witness is subpoenaed.

(3) If a witness, who has not been required to attend at the request of any party, is subpoenaed by the commission or executive director, his fees and mileage shall be paid from funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid.

History.

I.C., § 54-2068, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2068 was amended and re-numbered as § 54-2090.

54-2069. Real estate recovery fund established. — There is hereby created in the state treasury the real estate recovery fund. A balance of not more than twenty thousand dollars (\$20,000) shall be maintained in the fund, to be used for satisfying claims against persons licensed under this chapter, as provided in sections 54-2069 through 54-2078, Idaho Code. Any balance over twenty thousand dollars (\$20,000) shall be deposited in the special real estate fund and be subject to appropriation by the legislature for the use of the commission to carry out the provisions of this chapter.

History.

I.C., § 54-2069, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2069 was amended and re-numbered as § 54-2091.

54-2070. Augmentation of fund. — Upon the original application or renewal of every real estate broker's, associate broker's and salesperson's license for a two-year period, the licensee shall pay, in addition to the original or renewal license fee, a fee of twenty dollars (\$20.00). Such additional fees and all education fees charged and collected for tuition or registration, course materials and such other fees involved with the commission education programs shall be paid into the state treasury and credited to the special real estate fund as provided in section 54-2021, Idaho Code, except for such funds as are required to maintain a balance of twenty thousand dollars (\$20,000) in the real estate recovery fund as provided for in section 54-2069, Idaho Code.

History.

I.C., § 54-2070, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Compiler's Notes.**

Former § 54-2070 was amended and re-numbered as § 54-2092.

54-2071. Recovery from fund — Procedure — Grounds — Amount — Hearing. — (1) When any person obtains a final judgment in any court of competent jurisdiction against any licensee under this chapter, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required under this chapter, such person may, upon termination of all proceedings, including appeals in connection with any judgment, file a verified petition in the court in which the judgment was entered for an order directing payment out of the real estate recovery fund in the amount of actual damages included in the judgment and unpaid, but not more than ten thousand dollars (\$10,000) per licensee per calendar year. The recovery fund's liability for all claims arising from the acts or omissions of any one (1) licensee in any calendar year shall be limited to a payment of not more than ten thousand dollars (\$10,000), regardless of the number of persons damaged by the acts or omissions of a licensee, or the total amount of damage caused by such licensee, in any one (1) calendar year. If a claim is made against the fund and the commission has actual knowledge of any other claims against the recovery fund which have been filed or asserted against the same licensee and arise from acts or omissions of the licensee in the same calendar year, then the commission shall file an interpleader action in accordance with the applicable statutes and the Idaho rules of civil procedure against all known parties who may claim a right to payment from the fund. Unless the commission has actual knowledge of other potential claims, as stated above, and so files the interpleader action, the first person who obtains a final judgment against a licensee shall be entitled to the payment of that amount equal to the lesser of the judgment or ten thousand dollars (\$10,000), providing the claimant meets the other criteria set forth herein.

(2) A copy of the petition shall be served upon the commission and an affidavit of such service shall be filed with the court.

(3) The court shall act upon such petition within thirty (30) days after such service and, upon the hearing thereof, the petitioner shall be required to show that:

- (a) He is not the spouse of the debtor, or the personal representative of such spouse;
- (b) He has complied with all the requirements of sections 54-2069 through 54-2078, Idaho Code;
- (c) He has obtained a judgment of the kind described in subsection (1) of this section, stating the amount thereof and the amount owing thereon at the date of the petition;
- (d) He has caused to be issued a writ of execution upon the judgment and the officer executing the same has made a return showing that no

personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of them or of such of them as were found, under the execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized;

(e) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and

(f) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(4) Whenever the aggrieved person satisfies the court that it is not practicable to comply with one (1) or more of the requirements enumerated in subsections (3)(d), (e) and (f) of this section, and that the aggrieved person has taken all reasonable steps to collect that amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may in its discretion dispense with the necessity for complying with such requirements.

History.

I.C., § 54-2071, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2071 was amended and re-numbered as § 54-2093.

RESEARCH REFERENCES

A.L.R. — Duty of real estate broker to disclose identity of purchaser or lessee. 2 A.L.R.3d 1119.

Liability of real estate broker or agent to principal for concealing or failing to disclose offer. 7 A.L.R.3d 693.

Sufficiency, under statute of frauds, of description or designation of property in real estate brokerage contract. 30 A.L.R.3d 935.

Failure of real estate broker to disclose to principal fee-splitting agreement with ad-

verse party, or adverse party's broker, as breach of fiduciary duty barring claim for commission. 63 A.L.R.3d 1211.

Real estate broker's liability for misrepresentations as to income from or earnings on property. 81 A.L.R.3d 717.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

54-2072. Commission may answer petition — Compromise of claims. — (1) Whenever the court proceeds upon a petition as provided in section 54-2071, Idaho Code, the commission may answer and defend any

such action against the recovery fund on behalf of the recovery fund and in the name of the defendant and may use any appropriate method of review on behalf of the recovery account.

(2) The judgment set forth in the petition shall be considered as prima facie evidence only, and the findings of fact therein shall not be conclusive for the purposes of sections 54-2069 through 54-2078, Idaho Code.

(3) The commission may, subject to court approval, compromise a claim based upon the application of a petitioner.

History.

I.C., § 54-2072, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2072 was amended and re-numbered as § 54-2094.

54-2073. Court order requiring payment from recovery fund. — If the court finds, after hearing that the claim should be levied against the portion of the recovery fund allocated for the purpose of carrying out the provisions of sections 54-2069 through 54-2078, Idaho Code, the court shall enter an order directed to the commission requiring payment from the recovery fund of whatever sum it finds to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in section 54-2071, Idaho Code.

History.

I.C., § 54-2073, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES

Compiler's Notes.

Former § 54-2073 was amended and re-numbered as § 54-2095.

54-2074. Automatic suspension of broker's, associate broker's or salesperson's license on payment by commission — Condition for license reinstatement. — If, pursuant to court order, the commission pays from the recovery fund any amount in settlement of a claim or towards satisfaction of a judgment against a licensed broker, associate broker or salesperson, the license of such broker, associate broker or salesperson shall be automatically suspended without further order of the commission upon the effective date of any order by the court as set forth herein authorizing payment from the recovery fund. No such broker, associate broker or salesperson shall be granted reinstatement until he has repaid in full, the amount so paid from the recovery fund plus interest at the legal rate of interest allowable by law for judgments.

History.

I.C., § 54-2074, as added by 2000, ch. 285,
§ 3, p. 908.

STATUTORY NOTES**Compiler's Notes.**

Former § 54-2074 was amended and re-numbered as § 54-2097.

54-2075. Order of payment of claims if recovery fund balance insufficient — Interest. — If, at any time, the money deposited in the recovery fund and allotted for satisfying claims against licensees is insufficient to satisfy any authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of eleven percent (11%) per annum.

History.

I.C., § 54-2075, as added by 2000, ch. 285,
§ 3, p. 908.

54-2076. Commission's right to subrogation. — When the commission has paid from the recovery fund any sum to the judgment creditor, the commission has subrogated all other rights of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the commission and any amount and interest so recovered by the commission on the judgment shall be deposited to the recovery fund.

History.

I.C., § 54-2076, as added by 2000, ch. 285,
§ 3, p. 908.

54-2077. Waiver of rights. — The failure of a person to comply with all of the provisions of sections 54-2069 through 54-2071, Idaho Code, shall constitute a waiver of any rights hereunder.

History.

I.C., § 54-2077, as added by 2000, ch. 285,
§ 3, p. 908.

54-2078. Disciplinary action against licensees not restricted for violations of law or rules. — Nothing contained in sections 54-2069 through 54-2078, Idaho Code, limits the authority of the commission to take disciplinary action against a licensee for a violation of any of the provisions of the chapter, or of the rules of the commission, nor shall the repayment in full of all obligations to the recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of this chapter or the rules promulgated thereunder.

History.

I.C., § 54-2078, as added by 2000, ch. 285,
§ 3, p. 908.

54-2079. Termination of sales associate for violation of disciplinary provisions — Statement to be filed with commission. — Whenever a real estate broker terminates a sales associate for a violation of any of the provisions of sections 54-2060 through 54-2062, Idaho Code, the broker shall promptly file a written statement of the facts in reference thereto with the commission.

History.

I.C., § 54-2079, as added by 2000, ch. 285,
§ 3, p. 908; am. 2002, ch. 220, § 12, p. 605.

54-2080. Records — Disclosure to public. — Records kept in the office of the commission under authority of this chapter and chapter 18, title 55, Idaho Code, shall be open to public inspection as provided in chapter 3, title 9, Idaho Code.

History.

I.C., § 54-2080, as added by 2000, ch. 285,
§ 3, p. 908.

54-2081. [Reserved.]

54-2082. Short title. — Sections 54-2082 through 54-2097, Idaho Code, shall be known and may be cited as “The Idaho Real Estate Brokerage Representation Act.”

History.

I.C., § 54-2060, as added by 1996, ch. 250, § 1, p. 785; am. and redesisg. 2000, ch. 285,
§ 4, p. 908.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 54-2060.

54-2083. Definitions. — As used in sections 54-2082 through 54-2097, Idaho Code:

(1) “Adverse material fact” means a fact that would significantly affect the desirability or value of the property to a reasonable person or which establishes a reasonable belief that a party to the transaction is not able to or does not intend to complete that party's obligations under a real estate contract.

(2) “Agency representation” or “representation” means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties defined in section 54-2087, Idaho Code, are applicable. See also “representation.”

(3) “Assigned agent” means, where a brokerage is representing more than one (1) party to the transaction as a limited dual agent as provided in section

54-2088, Idaho Code, the sales associate assigned by the brokerage to act on behalf of one (1) client and to represent solely that client consistent with the applicable duties set forth in section 54-2087, Idaho Code. The designated broker shall not act as an assigned agent of the brokerage.

(4) "Brokerage" means a licensed designated broker, the licensed real estate business represented by that broker and its associated licensees.

(5) "Client" means a buyer or seller, or a prospective buyer or seller, or both who have entered into an express written contract or agreement with a brokerage for agency representation in a regulated real estate transaction.

(6) "Confidential client information" means information gained from or about a client that:

(a) Is not a matter of public record;

(b) The client has not disclosed or authorized to be disclosed to third parties;

(c) If disclosed, would be detrimental to the client; and

(d) The client would not be personally obligated to disclose to another party to the transaction. Information which is required to be disclosed by statute or rule or where the failure to disclose would constitute fraudulent misrepresentation is not confidential client information within the provisions of sections 54-2082 through 54-2097, Idaho Code. Information generally disseminated in the marketplace is not confidential client information within the provisions of such sections. A "sold" price of real property is also not confidential client information within the provisions of such sections.

(7) "Customer" means a buyer or seller, or prospective buyer or seller, who is not represented in an agency relationship in a regulated real estate transaction.

(8) "Customer services agreement" or "compensation agreement" means an agreement between a real estate brokerage and a customer for the provision of any real estate services for which the brokerage has the right to be compensated by the customer.

(9) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(10) "Idaho real estate license law and rules" means chapter 20, title 54, Idaho Code, and all administrative rules promulgated thereunder.

(11) "Limited dual agent" means a brokerage that is representing both a buyer and a seller as clients in a regulated real estate transaction, as provided in section 54-2088, Idaho Code.

(12) "Ministerial acts" means reasonably necessary and customary acts typically performed by real estate licensees in assisting a transaction to its closing or conclusion.

(13) "Nonagent" means a brokerage and its licensees working with or assisting a buyer or seller as a customer to which the duties provided in section 54-2086, Idaho Code, are applicable.

(14) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(15) “Representation” or “brokerage representation” or “represented” means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties provided in section 54-2087, Idaho Code, are applicable.

(16) “Representation agreement” or “contract for representation” means a written agreement between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction. A representation agreement under this chapter can only be made in writing, and cannot be made orally or by assumption or implication.

(17) “Sales associate” means a salesperson or an associate broker licensed under and associated with a designated broker.

History.

I.C., § 54-2061, as added by 1996, ch. 250, § 1, p. 785; am. and redesign. 2000, ch. 285, § 1, p. 834. § 5, p. 908; am. 2004, ch. 119, § 1, p. 396; am. 2007, ch. 150, § 1, p. 456; am. 2008, ch. 298, § 1, p. 834.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 150, in subsection (6)(d), substituted references to “sections 54-2082 through 54-2097, Idaho Code” and “such sections” for “this act”; added subsection (8) and redesignated former subsection (8) as (9); deleted former subsection (9), which was the definition for “express agreement or express contract”; added subsection (16) and redesignated former subsection (16) as (17).

The 2008 amendment, by ch. 298, in paragraph (6)(d), deleted “including ‘sold’ prices of property” following “marketplace” and added the last sentence.

Compiler’s Notes.

This section was formerly compiled as § 54-2061.

JUDICIAL DECISIONS

Cited in: Staff of State Real Estate Comm’n v. Nordling, 135 Idaho 630, 22 P.3d 105 (2001).

54-2084. Brokerage agency relationships — Creation. — (1) A buyer or seller is not represented by a brokerage in a regulated real estate transaction unless the buyer or seller and the brokerage agree, in a separate written document, to such representation. No type of agency representation may be assumed by a brokerage, buyer or seller or created orally or by implication.

(2) Types of brokerage relationships. The following types of brokerage relationships are recognized:

- (a) Nonagency;
- (b) Agency representation;
- (c) Limited dual agency representation;
- (d) Limited dual agency with assigned agents.

History.

I.C., § 54-2062, as added by 1996, ch. 250, § 1, p. 785; am. and redesign. 2000, ch. 285, § 6, p. 908; am. 2004, ch. 119, § 2, p. 396.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-2062.

JUDICIAL DECISIONS

Written Agreement.

When read together, this section and §§ 54-2002, 54-2004, 54-2050, and 54-2087 clearly indicate that any person who undertakes, for expected compensation, to represent another by directly or indirectly taking part in procur-

ing prospects, or negotiating a transaction, to purchase real property has no enforceable agreement unless the agreement is in writing. *Johnson v. McPhee*, 147 Idaho 455, 210 P.3d 563 (Ct. App. 2009).

54-2085. Disclosure and writing requirements — Agency disclosure brochure and representation confirmation. — (1) A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure adopted or approved by the Idaho real estate commission. The commission by motion shall establish the form and contents of the brochure in accordance with the provisions of this chapter. Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure.

(2) The agency disclosure brochure shall list the types of representation available to a buyer or seller in a regulated real estate transaction, the legal duties and obligations owed to the buyer or seller in each type of representation and a conspicuous notice that no representation will exist absent a written agreement between the buyer or seller and the brokerage.

(3) A brokerage's relationship with a buyer or seller as an agent, nonagent, limited dual agent, or limited dual agent with assigned agents, must be determined and all necessary agreements executed no later than the preparation of a purchase and sale agreement. A brokerage must disclose its relationship to both buyer and seller in any transaction no later than the preparation or presentation of a purchase and sale agreement.

(4) In addition, a purchase and sale agreement, an attachment thereto, or other document drafted in connection with a regulated real estate transaction shall contain the following confirmation of the relationship, whether it involved representation or not, between the buyer, seller and licensees involved:

REPRESENTATION CONFIRMATION AND ACKNOWLEDGMENT OF DISCLOSURE

Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- A. ☐ The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B. ☐ The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.

- C. ☐ The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D. ☐ The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A. ☐ The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B. ☐ The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C. ☐ The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
- D. ☐ The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

(5) The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this chapter shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of sections 54-2058 through 54-2078, Idaho Code.

(6) Neither the commission brochure nor the representation confirmation shall create a brokerage relationship. A separate, signed, written agreement is required for that purpose.

History.

I.C., § 54-2063, as added by 1996, ch. 250, § 1, p. 785; am. and redesign. 2000, ch. 285,

§ 7, p. 908; am. 2001, ch. 123, § 25, p. 417; am. 2001, ch. 251, § 1, p. 915; am. 2004, ch. 119, § 3, p. 396.

STATUTORY NOTES

Amendments.

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 123, § 25, in

subsection (1), substituted "adopted or approved" for "established"; "motion" for "rule"; "chapter" for "act"; and "a signed" for "an initiated".

The 2001 amendment, by ch. 251, § 1, in

subsection (4), inserted “, an attachment thereto,” following “and sale agreement” and added the form following subsection (4).

The letter “s” enclosed in parentheses so appeared in the law as enacted.

Compiler’s Notes.

This section was formerly compiled as § 54-2063.

54-2086. Duties to a customer. — (1) If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligations:

- (a) To perform ministerial acts to assist the buyer or seller in the sale or purchase of real estate;
- (b) To perform these acts with honesty, good faith, reasonable skill and care;
- (c) To properly account for moneys or property placed in the care and responsibility of the brokerage;
- (d) To disclose to the buyer/customer all adverse material facts actually known or which reasonably should have been known by the licensee;
- (e) To disclose to the seller/customer all adverse material facts actually known or which reasonably should have been known by the licensee.

(2) If a customer has entered into a compensation agreement or customer services agreement with the brokerage, the brokerage shall have the obligation to be available to the customer to receive and timely present all written offers and counteroffers.

(3) The duties set forth in this section are mandatory and may not be waived or abrogated, either unilaterally or by agreement.

(4) Nothing in this section prohibits a brokerage from charging a separate fee or commission for each service provided to the customer in the transaction.

(5) A nonagent brokerage and its licensees owe no duty to a buyer/customer to conduct an independent inspection of the property for the benefit of that buyer/customer and owe no duty to independently verify the accuracy or completeness of any statement or representation made by the seller or any source reasonably believed by the licensee to be reliable.

(6) A nonagent brokerage and its licensees owe no duty to a seller/customer to conduct an independent investigation of the buyer’s financial condition for the benefit of that seller/customer and owe no duty to independently verify the accuracy or completeness of statements made by the buyer or any source reasonably believed by the licensee to be reliable.

History.

I.C., § 54-2064, as added by 1996, ch. 250,

§ 1, p. 785; am. and redesign. 2000, ch. 285, § 8, p. 908; am. 2007, ch. 150, § 2, p. 456.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 150, added

subsections (2) through (4) and redesignated the subsequent subsections accordingly.

Compiler's Notes.

This section was formerly compiled as § 54-2064.

JUDICIAL DECISIONS**Failure to Disclose.**

License of real estate salesperson representing seller was properly suspended for failure to disclose to a potential buyer the existence of an invalid rule requiring that at

least one person living in a mobile home park be at least 55 years of age. Staff of State Real Estate Comm'n v. Nordling, 135 Idaho 630, 22 P.3d 105 (2001).

54-2087. Duties to a client. — If a buyer or seller enters into a written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations:

- (1) To perform the terms of the written agreement with the client;
- (2) To exercise reasonable skill and care;
- (3) To be available to the client to receive and timely present all written offers and counteroffers;
- (4) To promote the best interests of the client in good faith, honesty and fair dealing including, but not limited to:
 - (a) Disclosing to the client all adverse material facts actually known or which reasonably should have been known by the licensee;
 - (b) Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor; or
 - (c) Seeking a property for purchase at a price and under terms and conditions acceptable to the buyer and assisting in the negotiation therefor;
 - (d) For the benefit of a client/buyer: when appropriate, advising the client to obtain professional inspections of the property or to seek appropriate tax, legal and other professional advice or counsel;
 - (e) For the benefit of a client/seller: upon written request by a client/seller, requesting reasonable proof of a prospective buyer's financial ability to purchase the real property which is the subject matter of the transaction. This duty may be satisfied by any appropriate method suitable to the transaction or, when deemed necessary by the real estate licensee, by advising the client to consult with an accountant, lawyer, or other professional as dictated by the transaction.
- (5) To properly account for moneys or property placed in the care and responsibility of the brokerage pursuant to section 54-2041, Idaho Code; and
- (6) To maintain the confidentiality of specific client information as defined by and to the extent required in this chapter, and as follows:
 - (a) The duty to a client continues beyond the termination of representation only so long as the information continues to be confidential client information as defined in this chapter, and only so long as the information does not become generally known in the marketing community from a source other than the brokerage or its associated licensees;
 - (b) A licensee who personally has gained confidential client information about a buyer or seller while associated with one (1) broker and who later

associates with a different broker remains obligated to maintain the client confidentiality as required by this chapter;

(c) If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage shall inform the second client of the brokerage's prior representation of the former client and that confidential client information obtained during the first representation cannot be given to the second client. Nothing in this section shall prevent the brokerage from asking the former client for permission to release such information;

(d) Nothing in this section is intended to create a privileged communication between any client and any brokerage or licensee for purposes of civil, criminal or administrative legal proceedings.

(7) Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to a client to conduct an independent inspection of the property and owe no duty to independently verify the accuracy or completeness of any statement or representation made regarding a property. Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to conduct an independent investigation of either party's financial ability to complete a real estate transaction.

(8) The duties set forth in this section are mandatory and may not be waived or abrogated, either unilaterally or by agreement.

(9) Nothing in this section prohibits a brokerage from charging a separate fee or commission for each service provided to the client in the transaction.

(10) Nothing in this section shall result in imputed knowledge between multiple licensees of the brokerage when neither has reason to have such knowledge.

(11) A brokerage and its licensees may represent two (2) or more buyers who wish to make an offer for the purchase of the same real property; provided, that the brokerage or its licensee has advised all such buyers in writing of the same.

History.

I.C., § 54-2065, as added by 1996, ch. 250, § 1, p. 785; am. and redesign. 2000, ch. 285, § 9, p. 908; am. 2001, ch. 123, § 26, p. 417;

am. 2003, ch. 243, § 1, p. 626; am. 2004, ch. 119, § 4, p. 396; am. 2007, ch. 150, § 3, p. 456; am. 2009, ch. 133, § 1, p. 414.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 150, added subsections (3), (8), and (9) and redesignated the other subsections accordingly.

The 2009 amendment, by ch. 133, in subsection (5), added "pursuant to section 54-

2041, Idaho Code"; and added subsections (10) and (11).

Compiler's Notes.

This section was formerly compiled as § 54-2065.

JUDICIAL DECISIONS

Written Agreement.

When read together, this section and §§ 54-2002, 54-2004, 54-2050, and 54-2084 clearly indicate that any person who undertakes, for

expected compensation, to represent another by directly or indirectly taking part in procuring prospects, or negotiating a transaction, to purchase real property has no enforceable

agreement unless the agreement is in writing. *Johnson v. McPhee*, 147 Idaho 455, 210 P.3d 563 (Ct. App. 2009).

Real estate agents did not owe a duty to the buyers to conduct an independent inspection of the property where no such obligation was reduced to writing and the buyers agreed to eliminate all pre-sale contingencies and to

take the property "as is." *Blackmore v. Re/Max Tri-Cities, LLC*, 149 Idaho 558, 237 P.3d 655 (2010).

Cited in: *Staff of State Real Estate Comm'n v. Nordling*, 135 Idaho 630, 22 P.3d 105 (2001).

54-2088. Limited dual agency and assigned agency permitted. —

(1) A brokerage may represent both the buyer and the seller in the same transaction only as a limited dual agent and only with the express written consent of all other clients involved in the transaction.

(2) A brokerage acting as a limited dual agent may, at the option of the brokerage and with the express written consent of the other clients involved in the transaction, assign separate sales associates to each client to act on behalf of and represent that client solely. The designated broker shall not act as an assigned agent of the brokerage.

(3) The express written consent to limited dual agency shall contain separate signatures of all clients involved in the transaction and shall contain the following language:

CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY

The undersigned have received, read and understand the Agency Disclosure Brochure. The undersigned understand that the brokerage involved in this transaction may be providing agency representation to both the buyer and the seller. The undersigned each understands that, as an agent for both buyer/client and seller/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the buyer/client to buy or the seller/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2085, Idaho Code. The undersigned each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission,

confidential information of any other client with whom the brokerage has an agency relationship.

(4) All duties and obligations owed to a buyer/client or a seller/client under section 54-2087, Idaho Code, apply to limited dual agency relationships to the extent they do not unreasonably conflict with duties and obligations owed to the other client, except that:

(a) A limited dual agent shall not disclose any of the following without express written consent of the client to whom the information pertains:

- (i) That a buyer is willing to pay more than the listing price of the property;
- (ii) That a seller is willing to accept less than the listing price for the property;
- (iii) The factors motivating the buyer to buy or the seller to sell;
- (iv) That a buyer or seller will agree to a price or financing terms other than those offered.

(b) A limited dual agent does not have a duty of undivided loyalty to either buyer/client or seller/client, and by consenting to limited dual agency, the buyer and seller agree to those limitations.

(5) The following apply whenever a brokerage acting as a limited dual agent assigns separate sales associates to act on behalf of the separate clients:

(a) Designated broker. The designated broker continues to act as limited dual agent of each client with the duty to:

- (i) Supervise the assigned agents in the fulfillment of their duties to their respective clients;
- (ii) Refrain from advocating on behalf of any one client over another; and
- (iii) Refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

(b) Imputed knowledge. Knowledge of any fact known to the brokerage, its designated broker, or any other licensee associated with the brokerage, shall not be imputed to an assigned agent of the brokerage so as to create an impermissible conflict of interest. Nothing in this subsection shall diminish a licensee's duty with respect to facts actually known or that reasonably should have been known to the licensee.

(6) If a designated broker determines that confidential information of a client has been disclosed to another client in the transaction in violation of this section, the designated broker shall promptly provide written notice of the disclosure to the affected client.

(7) No cause of action for any buyer or seller shall arise against a limited dual agent for making any required or permitted disclosure under this act, nor does making such disclosure terminate the limited dual agency.

(8) Receipt of the agency disclosure brochure required by section 54-2085, Idaho Code, and the signed consent to dual representation by buyer and seller agreeing to limited dual agency representation shall be sufficient informed legal consent to dual representation under this act. A consent by the buyer and seller to possible dual representation in the future, such as

may be contained in a written marketing or representation agreement between a brokerage and client, shall also be considered effective and informed legal consent to dual representation.

History.

I.C., § 54-2066, as added by 1996, ch. 250, § 1, p. 785; am. and redesign. 2000, ch. 285, § 10, p. 908; am. 2004, ch. 119, § 5, p. 396.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 54-2066.

The words in parentheses so appeared in the law as enacted.

The words "this act", in subsections (7) and (8), refer to S.L. 1996, ch. 250, which is presently compiled as §§ 54-2082 to 54-2095 and 54-2097.

54-2089. Broker compensation. — Payment of compensation or a written agreement only for payment of compensation to a brokerage shall not constitute an agreement for agency representation or otherwise create an agency relationship.

History.

I.C., § 54-2067, as added by 1996, ch. 250, § 1, p. 785; am. and redesign. 2000, ch. 285, § 11, p. 908; am. 2007, ch. 150, § 4, p. 456.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 150, substituted "an agreement for agency representation or otherwise create an agency relationship" for "an express agreement creating an agency relationship."

Compiler's Notes.

This section was formerly compiled as § 54-2067.

54-2090. Written office policy required. — Each designated broker shall be responsible to adopt and maintain in each office, including branch offices, a written policy which identifies and describes the types of representation in which that brokerage and its associated licensees may engage with any buyer or seller, or both, as a part of that office's real estate brokerage services.

History.

I.C., § 54-2068, as added by 1996, ch. 250, § 1, p. 785; am. and redesign. 2000, ch. 285, § 12, p. 908; am. 2004, ch. 119, § 6, p. 396.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 54-2068.

54-2091. Duration of agency relationship. — (1) A brokerage's agency relationship and corresponding representation duties under sections 54-2082 through 54-2097, Idaho Code, shall commence on the date indicated on the written agreement between the brokerage and a buyer/client or seller/client and shall end at the earliest of:

- (a) Performance or completion of the representation;

- (b) Agreement by the parties;
- (c) Expiration of the agency relationship agreement.

(2) Nothing in sections 54-2082 through 54-2097, Idaho Code, shall prohibit the brokerage and the buyer or seller from changing the legal nature of their relationship or representation in accordance with such sections during the course of the real estate transaction. However, the brokerage is not relieved thereby from meeting the disclosure requirements and obtaining the written agreements, consents or confirmations required by sections 54-2082 through 54-2097, Idaho Code.

History.

I.C., § 54-2069, as added by 1996, ch. 250, § 1, p. 785; am. and redesiɡ. 2000, ch. 285, § 13, p. 908; am. 2007, ch. 150, § 5, p. 456.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 150, substituted "agency relationship" for "express representation" in the section catchline; throughout the section, substituted references to "sections 54-2082 through 54-2097, Idaho Code" for "this act"; and in the introductory

paragraph in subsection (1), inserted "agency relationship and corresponding" and "duties."

Compiler's Notes.

This section was formerly compiled as § 54-2069.

54-2092. Duties and obligations owed after termination of representation. — Except as otherwise agreed in writing, a brokerage owes no further duty or obligation to a client after termination of the agreed representation except:

- (1) Accounting for all moneys and property received by the brokerage during the representation; and
- (2) Maintaining the confidentiality of all information defined as confidential client information by this act.

History.

I.C., § 54-2070, as added by 1996, ch. 250, § 1, p. 785; am. and redesiɡ. 2000, ch. 285, § 14, p. 908.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-2070.

The words "this act", in subsection (2), refer

to S.L. 1996, ch. 250, which is presently compiled as §§ 54-2082 to 54-2095 and 54-2097.

54-2093. Vicarious liability abolished. — (1) A client, as defined in this chapter, whether buyer or seller, shall not be liable for a wrongful act, error, omission or misrepresentation of his broker or his broker's licensees unless the client had actual knowledge of or reasonably should have known of the wrongful act, error, omission or misrepresentation.

(2) A licensee or brokerage engaged in representation of a client shall be entitled to rely upon representations made by a client and shall not be liable for a wrongful act, error, omission or misrepresentation made by the client unless the licensee or brokerage had actual knowledge or reasonably should have known of the wrongful act, error, omission or misrepresentation.

(3) Nothing in this section shall be construed to diminish or limit any of the broker's or licensee's responsibilities under chapter 20, title 54, Idaho Code, or the rules promulgated thereunder.

History.

I.C., § 54-2071, as added by 1996, ch. 250, § 1, p. 785; am. and redesisg. 2000, ch. 285,

§ 15, p. 908; am. 2003, ch. 243, § 2, p. 626; am. 2010, ch. 213, § 5, p. 462; am. 2012, ch. 76, § 2, p. 219.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 213, in subsection (1), substituted "chapter" for "act" and deleted "or subagent" following "broker's licensees."

The 2012 amendment, by ch. 76, deleted "or made by any subagent" following "misrepresentation made by the client" in subsection (2).

sentation made by the client" in subsection (2).

Compiler's Notes.

This section was formerly compiled as § 54-2071.

54-2094. Representation not fiduciary in nature. — While this act is intended to abrogate the common law of agency as it applies to regulated real estate transactions, nothing in this act shall prohibit a brokerage from entering into a written agreement with a buyer or seller which creates an agency relationship in which the duties and obligations are greater than those provided in this act. However, unless greater duties are specifically agreed to in writing between the brokerage and a represented client, the duties and obligations owed to a represented client in a regulated real estate transaction are not fiduciary in nature and are not subject to equitable remedies for breach of fiduciary duty.

History.

I.C., § 54-2072, as added by 1996, ch. 250,

§ 1, p. 785; am. and redesisg. 2000, ch. 285, § 16, p. 908.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-2072.

The words "this act", in the first sentence,

refer to S.L. 1996, ch. 250, which is presently compiled as §§ 54-2082 to 54-2095 and 54-2097.

54-2095. Conflicts with other law. — If the provisions of this act are found to be in conflict with any other provision of Idaho law, the provisions of this act shall control.

History.

I.C., § 54-2073, as added by 1996, ch. 250,

§ 1, p. 785; am. and redesisg. 2000, ch. 285, § 17, p. 908.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-2073.

The words "this act" refer to S.L. 1996, ch. 250, which is presently compiled as §§ 54-2082 to 54-2095 and 54-2097.

54-2096. Severability. — The provisions of this chapter are severable and if any provision of this chapter or the application of such provision to

any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 54-2096, as added by 2000, ch. 285,
§ 18, p. 908.

54-2097. Rulemaking authority of the commission. — The Idaho real estate commission shall have authority to promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, to implement the provisions of this chapter.

History.

I.C., § 54-2074, as added by 1996, ch. 250, § 1, p. 785; am. and redesign. 2000, ch. 285,
§ 16, p. 908.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-2074.

CHAPTER 21

VETERINARIANS

SECTION.

- 54-2101. Declaration of policy.
- 54-2102. Short title.
- 54-2103. Definitions.
- 54-2104. License a prerequisite to practice —
Exceptions.
- 54-2105. Board of veterinary medicine —
Composition — Appointment
— Vacancy — Qualifications
— Compensation — Removal
— Meetings — Officers — Revenues — Powers.
- 54-2106. Emergency veterinary facilities —
On-call emergency services —
Requirements.
- 54-2107. License application — Contents —
Fee.
- 54-2108. Criminal background checks for
licensure.
- 54-2109. [Repealed.]
- 54-2110. License without clinical competency
test (CCT).

SECTION.

- 54-2111. Temporary permit.
- 54-2112. Expiration of license or certification
— Notice — Renewal — Inactive status.
- 54-2113. Corporate practice.
- 54-2114. Unauthorized practice a misdemeanor.
- 54-2115. Grounds for discipline.
- 54-2115A. Maximum time periods for suspension, revocation and reapplication.
- 54-2116. Judicial review.
- 54-2117. Relicensing and reinstatement.
- 54-2118. Violations of chapter — Remedies and penalties.
- 54-2119. Administration and enforcement of chapter.
- 54-2120. Attorney general's office to advise and represent.
- 54-2121. Creation of state board of veterinary medicine account.

54-2101. Declaration of policy. — This chapter is enacted as an exercise of the power of the state to promote the public health, safety and welfare by safeguarding the people and animals of this state by establishing and enforcing professional standards in the licensure and regulation of veterinary health professionals. It is hereby declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to

persons possessed of the personal and professional qualifications specified in this chapter.

History.

1971, ch. 173, § 1, p. 812; am. 1983, ch. 139, § 1, p. 336; am. 2009, ch. 84, § 1, p. 235.

STATUTORY NOTES

Cross References.

Professional service corporations, § 30-1301 et seq.

Prior Laws.

Former chapter 21 of title 54, which comprised S.L. 1921, ch. 62, §§ 1 to 17, 20, 24; am. 1925, ch. 75, § 1; I.C.A., §§ 53-2401 to 53-2417, 53-2420, 53-2421; am. 1961, ch. 108, §§ 1, 2; am. 1965, ch. 164, § 8; am. 1965, ch. 201, § 6; am. 1969, ch. 232, § 1; am. 1969, ch. 464, §§ 15, 16, were repealed by S.L. 1971, ch. 173, § 18.

Amendments.

The 2009 amendment, by ch. 84, in the first sentence, substituted "safeguarding the people and animals of this state by establishing and enforcing professional standards in the licensure and regulation of veterinary health professionals" for "safeguarding the people of this state against incompetent, dishonest or unprincipled practitioners of veterinary medicine."

RESEARCH REFERENCES

Am. Jur. — 78 Am. Jur. 2d, Veterinarians, §§ 1-6.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 1 et seq.

A.L.R. — Validity, construction, and effect

of statutes or regulations governing practice of veterinary medicine. 8 A.L.R.4th 223.

Liability of veterinarian for malpractice. 71 A.L.R.4th 811.

54-2102. Short title. — (1) This chapter shall be known as the Idaho Veterinary Practice Act.

(2) Except where otherwise indicated by context, in this chapter the present tense includes the past and future tenses and the future tense includes the present, each gender includes the other gender; and the singular includes the plural and the plural the singular.

History.

1971, ch. 173, § 2, p. 812; am. 1983, ch. 139, § 2, p. 336; am. 1990, ch. 111, § 1, p. 222.

STATUTORY NOTES

Prior Laws.

Former § 54-2102 was repealed. See Prior Laws, § 54-2101.

54-2103. Definitions. — As used in this chapter:

(1) "Accredited continuing education activity" means a provider and course, seminar, scientific program or any other activity approved by the board or its designees for continuing education credit.

(2) "Accredited or approved school of veterinary medicine" means any veterinary college or division of a university or college inside or outside the United States or Canada that offers the degree of doctor of veterinary medicine, veterinary medicine doctor, or its equivalent and is accredited or

approved by the council on education of the American veterinary medical association or other accrediting agency or association approved by the board.

(3) "Allied health professional" means a person holding a current active license, in good standing, in any state to practice one (1) of the healing arts including, but not limited to medicine, dentistry, osteopathy, chiropractic, acupuncture and podiatry.

(4) "Anesthetized" means any condition of general anesthesia, caused by the administration of a drug or combination of drugs in sufficient quantity to produce a state of unconsciousness or disassociation and blocked response to a given pain or alarm stimulus.

(5) "Animal" means any animal other than man and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.

(6) "Assistant" means any individual, other than a certified veterinary technician or a licensed veterinarian, who is utilized by a licensed veterinarian to assist in the performance of acts pertaining to the practice of veterinary medicine.

(7) "Board" means the state board of veterinary medicine.

(8) "Certified euthanasia agency" or "CEA" means a law enforcement agency, an animal control agency or a society for the prevention of cruelty to animals, which has been inspected and certified by the euthanasia task force or the board.

(9) "Certified euthanasia technician" or "CET" means:

(a) A person employed by a certified euthanasia agency but not to include an individual employed as a technician by animal research laboratories, who is instructed and certified by the euthanasia task force or the board as defined in the rules of the board.

(b) Any person who is trained prior to December 31, 1992, in euthanasia methods, in a course approved by the board, may be certified upon presentation of evidence of such training to either the euthanasia task force or the board.

(10) "Certified veterinary technician" means a person who has fulfilled the certification requirements prescribed by board rule and has been certified by the board to practice veterinary technology in this state.

(11) "Consultation" means a deliberation between two (2) or more veterinarians concerning the diagnosis of a disease or the proper management of the case.

(12) "Credit hour" means fifty (50) minutes of participation in an accredited continuing education activity.

(13) "Dentistry" is the practice of veterinary medicine and means the application or use of any instrument or device to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury, disease or other condition of an animal's tooth, gum or related tissue. Dentistry includes, but is not limited to:

(a) "Preventive dental procedures" including, but not limited to, the removal of calculus, soft deposits, plaque, stains, and floating to shape the teeth above the gum line or the smoothing, filing or polishing of tooth surfaces above the gum line; and

(b) "Operative dentistry/oral surgery" or any other dental procedure that invades the hard or soft oral tissue including a procedure that alters the structure of one (1) or more teeth, or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth.

(14) "Direct supervision" means the supervising veterinarian is on the premises where the animal is being treated, is quickly and easily available and the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires.

(15) "Discipline" means board action including, but not limited to:

(a) Refusing to issue, renew or reinstate a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;

(b) Denial, revocation, suspension, sanction, probation or voluntary surrender of a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;

(c) The ability to enter into consent agreements and negotiated settlements with licensed veterinarians, certified veterinary technicians, certified euthanasia agencies and certified euthanasia technicians;

(d) The ability to bring an administrative or civil action against any person in or outside of this state who practices veterinary medicine, veterinary technology or who performs euthanasia within this state.

(16) "Emergency" means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

(17) "Emergency veterinary facility" means any facility with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation or that displays to the public any sign, card, or advertisement that indicates it is an emergency veterinary clinic or hospital. An emergency veterinary facility may be an independent after-hours service, an independent twenty-four (24) hour service, or it may be part of a full-service veterinary medical facility.

(18) "Euthanasia task force" means a task force established by the board for the purposes of training, examining, certifying and inspecting certified euthanasia agencies and certified euthanasia technicians.

(19) "Extra label use" means the actual or intended use of a human or veterinary drug in an animal in a manner that is not in accordance with the drug's labeling.

(20) "Floating" means shaping the posterior (cheek) teeth and the incisors (cutting teeth) in horses, mules and donkeys through the use of hand floats, rasps, burs, mechanical files or other file-like instruments to restore balance, allow more efficient mastication, and reduce pain and trauma to the periodontal tissues.

(21) "Herd, litter or flock" of animals means animals managed as a group for purposes including, but not limited to, breeding, sale, show or food production.

(22) "Immediate supervision" means the supervising veterinarian is in the immediate area, in audible and visual range of the animal patient and

the person treating the patient and the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires.

(23) "In good standing" means, when used in reference to an applicant for licensure or certification, that an applicant:

- (a) Has not been the recipient of any administrative penalties regarding his practice of veterinary medicine including, but not limited to, fines, formal reprimands, license suspensions or revocations (except for license revocations for nonpayment of license renewal fees) or probationary limitations, or has not entered into any consent agreement or negotiated settlement that contains conditions placed by a board on his professional conduct and practice, including any voluntary surrender of a license; and
- (b) Has never had his United States drug enforcement administration privileges restricted or revoked; and
- (c) Is not currently under investigation by another veterinary licensing authority for acts which would provide a basis for disciplinary action in this state, as determined by the board; and
- (d) Has no physical or mental impairment related to drugs, alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public; and
- (e) Has not been convicted of a felony as defined in chapter 1, title 18, Idaho Code; and
- (f) Has no criminal conviction record or pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of veterinary medicine. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the board in sufficient detail to enable the board to make a determination whether the record or charge is substantially related to the practice of veterinary medicine.

(24) "Indirect supervision" means the supervising veterinarian is not on the premises but is available for immediate contact by telephone, radio or other means, has given either written or oral instructions for treatment of the animal patient, the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires, and the animal, if previously anesthetized, has recovered to the point of being conscious and sternal.

(25) "Legend/Prescription drug" means any drug which, under federal law, regulation or rule, is required, prior to being distributed or delivered, to be labeled with one (1) of the following statements: "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian," or "Caution: Federal law prohibits dispensing without a prescription," or "RX Only," or a drug which is required by any applicable state or federal law, rule or regulation to be distributed or dispensed pursuant to a prescription only, or is restricted to use by licensed practitioners only.

(26) "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state.

(27) "Malpractice" means, but is not limited to:

- (a) Treatment in a manner contrary to accepted veterinary practices and with injurious results; or
- (b) Any professional misconduct or unreasonable lack of professional skill or fidelity in the performance of the professional practice of veterinary medicine; or
- (c) Failure to provide adequate supervision, except in an emergency situation; or
- (d) Allowing an unqualified individual to perform a procedure that is part of the practice of veterinary medicine; or
- (e) The negligent practice of veterinary medicine, as determined by the standard of practice for the area, that results in injury, unnecessary suffering or death.

(28) "Medical incompetence" means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients.

(29) "Mobile clinic" means a vehicle including, but not limited to, a camper, motor home, trailer or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(30) "On-call emergency service" means a veterinary medical facility that is available to provide emergency veterinary services as requested if a veterinarian is available.

(31) "Owner/Ownership" means ownership as defined by the laws of property and ownership, chapter 1, title 55, Idaho Code, and chapter 1, title 73, Idaho Code.

(32) "Person" means any individual, firm, partnership, association, joint venture, cooperative and corporation, or any other group or combination acting in concert; and whether or not acting as principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.

(33) "Physical or mental incompetence" means the veterinarian's ability to practice veterinary medicine with reasonable skill and safety is impaired by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals or any other substance, or as a result of any mental or physical disability.

(34) "Practice of veterinary medicine" in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine and means:

- (a) To directly or indirectly diagnose, treat, correct, change, relieve or prevent animal disease, deformity, defect, injury or other physical or mental conditions; including the prescription or administration of any drug, medicine, biologic, apparatus application, anesthetic or other therapeutic or diagnostic substance or technique, or the use of any obstetrical procedure or any manual or mechanical procedure for artificial insemination, for testing or examining for pregnancy, fertility evaluation, embryo transplant, grading of fresh semen, or to render advice or recommendation with regard to any of the above.
- (b) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subsection (34)(a) of this section.

(c) To use any title, words, abbreviations or letter in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subsection (34)(a) of this section, except where such person is a licensed veterinarian.

(35) "Professional supervision" means the supervising veterinarian is in daily contact by telephone, radio or other means with the temporary licensee.

(36) "Referral" means the transfer of responsibility for diagnosis and treatment from the referring veterinarian to the receiving veterinarian, or from the referring veterinarian to the board-certified specialist, or from the referring veterinarian to an allied health professional.

(37) "Regular employee" means a person who performs services for the animal's owner other than, or in addition to, feeding, boarding, castrating and dehorning, but does not include independent contractors or agents.

(38) "Supervision" means the action or process of a supervising veterinarian in directing activities or a course of action for those individuals to whom activities or functions have been assigned or delegated.

(39) "Supervising veterinarian" means a licensed veterinarian utilizing the services of a temporary licensee, certified veterinary technician, veterinary technician, veterinary technician with a temporary certification, veterinary assistant, certified euthanasia technician, or as provided by rule. A supervising veterinarian shall be individually responsible and liable, regardless of the supervision provided, for all damages arising out of his own acts or omissions and for the performance of any acts and omissions pertaining to the practice of veterinary medicine that are delegated to the temporary licensee, certified veterinary technician, veterinary technician, veterinary assistant or certified euthanasia technician. Nothing herein shall be construed to deprive the board of its disciplinary authority with respect to the temporary licensees, certified veterinary technicians, veterinary technicians, veterinary assistants or certified euthanasia technicians.

(40) "Unethical or unprofessional conduct" means to knowingly engage in conduct of a character likely to deceive or defraud the public, false or misleading advertising or solicitation, obtaining any fee or compensation by fraud or misrepresentation, sharing office space and working in conjunction with any person illegally practicing veterinary medicine, employing either indirectly or directly an unlicensed or uncertified person to perform acts pertaining to the practice of veterinary medicine, except as provided by law or rule, or the violation of any law or rules adopted by the board pertaining to unethical or unprofessional conduct, or that provide a code of professional conduct to be followed and carried out by persons licensed or certified by the board.

(41) "Unlicensed practice" means:

(a) The practice of veterinary medicine in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, without a valid, unexpired, unrevoked, and unsuspended active license or certification in this state to do so, except as provided by law or rule; or

(b) Representing one's self through offerings, advertisements or use of professional titles or designations as being qualified to practice veterinary medicine.

(42) “Veterinarian” means a person who has received a doctor’s degree in veterinary medicine from an accredited or approved school of veterinary medicine or as otherwise provided by law or rule.

(43) “Veterinarian on call” means a veterinarian is not present at the veterinary medical facility, but is able to respond within a reasonable time to requests for emergency veterinary services.

(44) “Veterinarian on premises” means a veterinarian is present at the veterinary medical facility and is prepared and qualified to render veterinary services.

(45) “Veterinary medical facility” means any premises, office, unit, structure, mobile unit, or area utilized for the practice of veterinary medicine other than the premises of an owner when used for treatment of the owner’s animal.

(46) “Veterinary technician” means a person who has graduated from a veterinary technology program accredited or approved by the council on education of the American veterinary medical association, or other accrediting agency approved by the board, or a person who has received equivalent training as set forth in the rules of the board.

(47) “Veterinary technology” means the performance of services within the practice of veterinary medicine by a person working under the direction of a supervising veterinarian to perform duties that require an understanding of veterinary medicine in order to carry out the orders of the veterinarian. Veterinary technology does not include prognosis, diagnosis, operative dentistry, deliberate tooth extraction procedures or the prescribing of treatment or performing surgery of any kind.

History.

1971, ch. 173, § 3, p. 812; am. 1983, ch. 139, § 3, p. 336; am. 1990, ch. 111, § 2, p. 222; am. 1991, ch. 138, § 1, p. 325; am. 1995, ch. 62, § 1, p. 145; am. 2000, ch. 122, § 1, p. 269; am.

2001, ch. 149, § 1, p. 525; am. 2006, ch. 139, § 1, p. 395; am. 2007, ch. 54, § 1, p. 126; am. 2009, ch. 82, § 1, p. 229; am. 2010, ch. 105, § 1, p. 207.

STATUTORY NOTES

Cross References.

Establishment of euthanasia task force, § 54-2105.

Prior Laws.

Former § 54-2103 was repealed. See Prior Laws, § 54-2101.

Amendments.

The 2006 amendment, by ch. 139, rewrote subsection (17), which formerly read: “‘Emergency veterinary hospital’ means a facility in which veterinary services are provided by either a ‘veterinarian on premises’ or ‘veterinarian on call’”; added present subsections (30) and (44) and renumbered the remaining subsections accordingly; substituted “subsection (34)(a)” for “subsection (33)(a)” in present subsections (34)(b) and (c); deleted former subsection (42), which read: “‘Veterinarian on premises’ means a veterinarian is present at

the veterinary medical facility and is prepared and qualified to render veterinary services”; deleted “and has been designated to so respond” from the end of present subsection (43); rewrote present subsection (45), which formerly read: “‘Veterinary medical facility’ means any premises, unit, structure or mobile unit used or controlled by a veterinarian for the practice of veterinary medicine and where any animal is received or confined to be examined, diagnosed or treated medically, surgically or prophylactically. This does not include the owner’s animal on the owner’s premises”; and substituted “Veterinary technology does” for “However, such services shall” in present subsection (47).

The 2007 amendment, by ch. 54, deleted the last sentence in subsection (4), which formerly read: “At a minimum, each anesthetized patient shall be monitored and under continuous observation until the patient is

awake and in sternal recumbency"; and in subsection (9)(a), inserted "a law enforcement employee."

The 2009 amendment, by ch. 82, in subsection (9)(a), deleted "or a law enforcement employee working under the direct supervision of a licensed veterinarian" following "certified euthanasia agency."

The 2010 amendment, by ch. 105, throughout the section, substituted "supervising veterinarian" for "supervisor"; rewrote subsection (6), which formerly read: "Assistant" means any individual who is employed by an actively licensed veterinarian to perform acts pertaining to the practice of veterinary medicine and receives compensation for such acts from the employing veterinarian but is not a certified veterinary technician or licensed veterinarian"; in subsection (23), inserted "when used in reference to an applicant for licensure or certification"; in subsection (38), substituted "action or process of a supervising veterinarian in directing activities or a course of

action for those individuals to whom activities or functions have been assigned or delegated" for "action or process of directing activities or a course of action, and pertains to any and all employees of the veterinarian"; in subsection (39), in the first sentence, substituted "means a licensed veterinarian utilizing" for "means an actively licensed veterinarian employing and utilizing," and in the second sentence, substituted "his own acts or omissions and for the performance of any acts" for "his own acts or omissions or for the performance of any acts"; and in subsection (47), substituted "by a person working under the direction of a supervising veterinarian" for "by a person employed by a licensed veterinarian."

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

For more on the council on education of the American veterinary medical association, see <http://www.avma.org/educationcvea>.

RESEARCH REFERENCES

Am. Jur. — 78 Am. Jur. 2d, Veterinarians, § 1.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 1 et seq.

54-2104. License a prerequisite to practice — Exceptions. —

(1) No person may practice veterinary medicine in the state who is not an actively licensed veterinarian or the holder of a valid temporary permit issued by the board.

(2) This chapter shall not be construed to prohibit:

(a) A veterinarian employed by the federal, state or local government from performing his official duties specifically required under any lawful act or statute, except that this exemption shall not apply to such persons not actively engaged in performing or fulfilling their official duties and responsibilities.

(b) A person who is a regular student currently enrolled and in good standing in an accredited or approved school of veterinary medicine, veterinary science department or an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education from performing duties or actions assigned by his instructors, or from working under the direct supervision of an actively licensed veterinarian during a school vacation period. The unsupervised or unauthorized practice of veterinary medicine by a student, even though on the premises of an accredited or approved school of veterinary medicine, veterinary science department, an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education or at a veterinary medical facility, is prohibited.

(c) A person who is a regular student currently enrolled and in good standing in a nonaccredited or nonapproved educational institution, that

holds a valid certificate of registration issued by the Idaho state board of education, from performing duties or actions assigned by his instructors. This exemption does not include surgery or the administration of controlled substances or legend/prescription drugs, unless specifically allowed by state or federal law, rule or regulation. The unsupervised or unauthorized personal practice of veterinary medicine by a student on the premises of a nonaccredited or nonapproved educational institution is prohibited.

(d) Idaho extension personnel from performing their official duties.

(e) A veterinarian holding a current, active license, in good standing, in another state, from consulting with a licensed veterinarian in this state.

(f) Any merchant or manufacturer from selling nonprescription and noncontrolled medicines, biologics, feed, medicated feed, appliances or other products for the prevention or treatment of animal and poultry diseases. Such merchants or manufacturers shall not, either directly or indirectly, attempt to diagnose a symptom or disease in order to advise treatment, use of drugs, medicines, appliances or products.

(g) A farmer, rancher or feedlot operator, including custom ranch or feedlot operators, and their regular employees, from caring for and treating animals within their possession or control, when such animals have been consigned by their legal owner and except where the ownership or possession of the animal was transferred or the employment changed to circumvent this chapter.

(h) The owner of an animal or his regular employees from caring for and treating the animals belonging to such owner, or livestock owners or regular employees pregnancy testing their own or employer's cattle or the exchange of services for which no monetary compensation is paid between owners or their regular employees, except where the ownership or possession of the animal was transferred or the employment changed to circumvent this chapter, and provided that only an actively licensed veterinarian may immunize or treat an animal for diseases which require the use of a vaccine that is restricted by state or federal law, rules or regulations, or as otherwise provided by board rule. Notwithstanding the provisions of this paragraph, a veterinarian/client/patient relationship, as defined by rules, must exist when controlled substances or legend/prescription drugs are administered, distributed, dispensed or prescribed.

(i) A member of a faculty of an accredited or approved school of veterinary medicine, a veterinary science department, or an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education, from performing his regular functions. The unsupervised or unauthorized personal practice of veterinary medicine, by a faculty member on the premises of any of the above institutions, is prohibited.

(j) Any person from selling or applying any pesticide, insecticide, or herbicide.

(k) A person lecturing or giving instructions or demonstrations at an accredited or approved school of veterinary medicine, veterinary science department or an educational institution accredited or approved by a

national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education, or in connection with an approved continuing education course or seminar.

(l) A member of a faculty of a nonaccredited or nonapproved educational institution, who holds a valid certificate of registration issued by the Idaho state board of education, from performing his regular functions. This exemption does not include surgery or the administration of controlled substances or legend/prescription drugs, unless specifically allowed by state or federal law, rule or regulation. The unsupervised or unauthorized personal practice of veterinary medicine by a faculty member on the premises of a nonaccredited or nonapproved educational institution is prohibited.

(m) Individuals employed as instructors or researchers by, or enrolled as students in, any bona fide medical research institution from conducting experiments and scientific research on animals:

(i) In the development of pharmaceuticals, biologicals, serums for treating human or animal ailments; or

(ii) In the development of methods of treatment or techniques for the diagnosis or treatment of human or animal ailments; or

(iii) When engaged in the study and development of methods and techniques directly or indirectly applicable to the practice of veterinary medicine, so long as such research is conducted in compliance with applicable state and federal laws, rules and regulations.

(n) Any person from performing artificial insemination of domestic animals as governed by chapter 8, title 25, Idaho Code.

(o) Any person from horseshoeing or hoof trimming bovine, equine and farm animals.

(p) An allied health professional actively licensed and in good standing in any state from participating in a medical procedure involving an animal, provided that such participation is in his licensed field of medicine and under the indirect supervision of an actively licensed veterinarian.

(q) Any person from the gratuitous treatment of animals in an emergency as a neighborly act.

(r) Any state or federal livestock inspector from performing his official duties specifically required under any lawful act or statute, and provided that this exemption shall not apply to such persons not actively engaged in performing or fulfilling their official duties and responsibilities.

(s) A certified euthanasia agency from operating as a CEA as defined by law and rules.

(t) A certified euthanasia technician from performing those duties as defined by law and rules.

(u) Any person from utilizing cotton swabs, gauze, dental floss, dentifrice or toothbrushes to clean an animal's teeth.

(v) A certified veterinary technician from practicing veterinary technology under appropriate supervision, as defined by the rules of the board.

(w) An assistant or veterinary technician from performing acts pertaining to the practice of veterinary medicine under appropriate supervision, as defined by the rules of the board.

(x) The personal representative, executor or sole surviving heir of a licensed veterinarian from continuing to operate the veterinary medical practice of the deceased for a period of not more than three (3) years following death. This exception only applies where during such three (3) year period:

(i) Good faith efforts are being made to sell the veterinary medical practice; and

(ii) All the decisions pertaining to the diagnosis, care and treatment of the patients are made by an actively licensed veterinarian.

(y) A veterinarian with an active license in good standing from another state from practicing veterinary medicine on animals in the collection of a publicly owned zoo that is either licensed by the United States department of agriculture (USDA) as an exhibitor or is accredited by the association of zoos and aquariums (AZA), but only when the Idaho licensed veterinarian who regularly attends to these animals is unavailable or unqualified to render the services required. This exemption from licensure only applies after the out-of-state veterinarian notifies the board in writing: (1) where he will be practicing in Idaho; and (2) the expected duration of the practice. After the out-of-state veterinarian completes his services under this section, he must so notify the board in writing of that fact. Unless expressly extended by the board in its sound discretion, an exemption under this section is limited to a period of one (1) year from the initial notification date.

(3) Nothing in this section shall be construed as limiting the board's authority to provide other exemptions or exceptions to the requirements for licensing, under its rulemaking authority, as the board may find necessary or appropriate.

History.

1971, ch. 173, § 4, p. 812; am. 1983, ch. 139, § 4, p. 336; am. 1990, ch. 111, § 3, p. 222; am. 1993, ch. 72, § 2, p. 189; am. 1995, ch. 62, § 2,

p. 145; am. 2000, ch. 122, § 2, p. 269; am. 2001, ch. 149, § 2, p. 525; am. 2008, ch. 135, § 1, p. 378; am. 2010, ch. 105, § 2, p. 207; am. 2011, ch. 80, § 1, p. 169.

STATUTORY NOTES

Prior Laws.

Former § 54-2104 was repealed. See Prior Laws, § 54-2101.

Amendments.

The 2008 amendment, by ch. 135, in the introductory paragraph in paragraph (2)(x), substituted "medical practice" for "medical facility" and "three (3) years" for "twelve (12) months," deleted "and providing that an actively licensed veterinarian makes all the decisions pertaining to the diagnosis, care and treatment of the patients" following "death," and added the last sentence; and added paragraphs (2)(x)(i) and (2)(x)(ii).

The 2010 amendment, by ch. 105, in paragraphs (2)(v) and (2)(w), deleted "employed by an actively licensed veterinarian" following "veterinary technician"; and in paragraph (2)(w), deleted "and provided that the employing veterinarian compensates the assistants for the performance of such acts" from the end.

The 2011 amendment, by ch. 80, added paragraph (2)(y).

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

For more on the association of zoos and aquariums, see <http://www.aza.org>.

54-2105. Board of veterinary medicine — Composition — Appointment — Vacancy — Qualifications — Compensation — Removal — Meetings — Officers — Revenues — Powers. — (1) A board of veterinary medicine, which shall consist of six (6) members to be appointed by the governor, is hereby created in the department of self-governing agencies. Five (5) members shall be veterinarians and one (1) member shall be a public member. Each of the five (5) veterinary members shall serve a term of four (4) years as a veterinary board member and a fifth year as a liaison officer, or until his successor is appointed, except that the terms of the first appointees may be for shorter periods to permit staggering of terms whereby one (1) term expires each year. The public member shall serve for a term of three (3) years or until his successor is appointed.

Whenever the occasion arises for an appointment of a veterinary member under this section, the state veterinary medical association or one (1) of the regional veterinary medical associations may nominate three (3) or more qualified persons and forward the nominations to the governor at least thirty (30) days before the date set for the appointment. The governor shall appoint one (1) of the persons so nominated. Vacancies due to death, resignation or removal shall be filled for the remainder of the unexpired term in the same manner as regular appointments. No person shall serve two (2) consecutive terms, except in the case of a person appointed for less than a full term. Each of the five (5) veterinarians shall be qualified to serve as a member of the board if a graduate of an accredited or approved school of veterinary medicine or, if a graduate of a nonaccredited or nonapproved school, a letter from the educational commission for foreign veterinary graduates (ECFVG) certifying completion of the ECFVG program or a copy of their ECFVG certificate, or verification of successful completion of any educational equivalency program established for the purpose of evaluating an individual's educational knowledge and clinical skills as they relate to the practice of veterinary medicine, as approved and outlined by the rules of the board. In addition to verification of graduation from an accredited or nonaccredited school of veterinary medicine, each of the five (5) veterinary members shall be a resident of this state, and have been licensed to practice veterinary medicine in this state for the five (5) years immediately preceding the time of appointment. The public member shall be at least twenty-one (21) years of age and a resident of this state for five (5) years immediately preceding appointment. No person may serve on the board who is, or was, during the two (2) years preceding appointment, a member of the faculty or trustees of an accredited school of veterinary medicine.

(2) Each member of the board and certified euthanasia task force shall be compensated as provided by section 59-509(n), Idaho Code.

(3) Any member of the board may be removed by the governor at his discretion.

(4) The board shall meet at least once each year at the time and place fixed by rule of the board. Other necessary meetings may be called by the president of the board by giving notice as may be required by state statute or rule. Except as may otherwise be provided, a majority of the board constitutes a quorum. Meetings shall be open and public except as otherwise provided by the open meeting law, chapter 23, title 67, Idaho Code.

(5) The board member serving the fourth year of appointment shall be the president of the board and shall serve as chairman at the board meetings.

(6) The veterinary board member serving the fifth year of appointment shall be the liaison officer of the board and shall render advice, review and mediate complaints, and perform other tasks assigned by the board.

(7) All revenues received under this chapter shall be paid to the state board of veterinary medicine account created in section 54-2121, Idaho Code, and shall be subject to and administered in accordance with the provisions of this chapter.

(8) The responsibility for enforcement of the provisions of this chapter is hereby vested in the board. The board shall have all of the duties, powers and authority specifically granted by or necessary for the enforcement of this chapter and the rules made pursuant thereto, as well as such other duties, powers and authority as it may be granted from time to time by applicable law. The powers vested in the board shall include, but are not limited to:

(a) Establish qualifications and prescribe the application format for issuance or renewal of a license to practice as a veterinarian and certification to practice as a veterinary technician, euthanasia agency or euthanasia technician, review each application for compliance with the licensure and certification requirements, issue, renew or deny licenses and certifications. Upon a showing of good cause by a licensee or certificate holder to the board, the board may grant an extension of time for submission of the required application or renewal documentation, including the required number of continuing education hours, as set forth by this chapter or the rules of the board.

(b) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine, or certification to practice veterinary technology or as a euthanasia technician or operate as a certified euthanasia agency in the state.

(c) Issue, renew, reinstate, deny, suspend, sanction, reprimand, restrict, limit, place on probation, require voluntary surrender of, or revoke any licenses, certifications or temporary permits or certifications to practice veterinary medicine, veterinary technology or euthanize animals in the state, and may fine and impose other forms of discipline, and enter into consent agreements and negotiated settlements with licensed veterinarians, certified veterinary technicians, certified euthanasia technicians and certified euthanasia agencies consistent with the provisions of this chapter and the rules adopted hereunder. Whenever it appears that grounds for discipline exist under this chapter and the board finds that there is an immediate danger to the public health, safety or welfare, the board is authorized to commence emergency proceedings for revocation or other action. Such proceedings shall be promptly instituted and processed under the applicable provisions of chapter 52, title 67, Idaho Code.

(d) Establish a schedule of fees for licensing, certifying and registering veterinarians, veterinary technicians, euthanasia agencies and euthanasia technicians, as well as for the review, approval and administration of national licensing and certification examinations.

(e) In addition to the fees specifically provided for herein, the board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this chapter or rules adopted hereunder. Such services rendered shall include, but not be limited to, the following:

- (i) Issuance of duplicate licenses or certificates;
- (ii) Mailing lists or reports of data maintained by the board;
- (iii) Copies of any documents;
- (iv) Verification of license or certification status;
- (v) Examination review, approval and administration; and
- (vi) Examination materials.

(f) Upon its own motion or upon any complaint, to initiate and conduct investigations on all matters relating to the practice of veterinary medicine or veterinary technology or the euthanizing of animals. Complaints not filed within one (1) year after the alleged unlawful conduct occurs will not be investigated. If the alleged unlawful conduct is of a continuing nature, the date of the occurrence of such conduct shall be deemed to be any date subsequent to the commencement of the unlawful conduct up to and including the date on which the complaint is filed so long as the alleged unlawful conduct continues.

(g) Initiate and conduct disciplinary hearings or proceedings on its own or through its designated hearing officer, provided such hearings and proceedings shall be held in conformance with the provisions of chapter 52, title 67, Idaho Code, and in connection thereto, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and may commission depositions. The board may designate one (1) or more of its members or a person appointed by the state board of veterinary medicine to serve as its hearing officer.

(h) Employ an executive director who shall be responsible for the performance of the administrative functions of the board and such other duties as the board may direct. The board may also employ or contract with other individuals to provide professional, clerical or other services deemed necessary by the board to effectuate the provisions of this chapter and the rules of the board, and purchase or rent necessary office space, equipment and supplies. The compensation of the executive director and other personnel shall be determined by the board and the executive director shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(i) Appoint from its own membership one (1) or more members to act as representatives of the board at any meeting within or outside the state where such representation is deemed desirable.

(j) Bring proceedings in the courts for the enforcement of this chapter or any rules made pursuant thereto.

(k) For purposes of enforcement of the provisions of this chapter and any rules duly promulgated hereunder, including the levying of civil penalties, assessment and collection of fines, and recovery of costs and paralegal, hearing officer and attorney's fees incurred by the board in investigation

and prosecution of complaints, the board shall maintain jurisdiction over individuals, irrespective of their license or certification status (i.e., active, inactive, expired, lapsed, surrendered or disciplined) relative to acts, omissions, complaints and investigations which occurred during the licensure or certification period. Jurisdiction of the board shall also extend to all individuals engaged in the practice of veterinary medicine, veterinary technology or practicing as a certified euthanasia agency or certified euthanasia technician in this state as defined in section 54-2103, Idaho Code. It is the intent of this subsection that the board's jurisdiction should extend to all licensed or unlicensed or certified or uncertified individuals and that licensees and certification holders cannot divest the board of jurisdiction by changing, surrendering or relinquishing licensure or certification status.

(l) Establish a certified euthanasia task force for the purposes of training, examining, licensing and certifying euthanasia agencies and euthanasia technicians and assess application, training workshop and certification fees. The fees so assessed are continuously appropriated to the board to support the activities of the task force.

(m) Adopt, amend or repeal all sections of this chapter and rules necessary for its government and all rules necessary to carry into effect the provisions of this chapter pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

(n) Conduct probationary or other practice and facility inspections necessary for enforcement of this chapter or the rules duly promulgated hereunder or any order, negotiated settlement or probationary agreement of the board and issue administrative citations to alleged violators.

History.

1971, ch. 173, § 5, p. 812; am. 1974, ch. 13, § 152, p. 138; am. 1976, ch. 166, § 17, p. 596; am. 1980, ch. 247, § 68, p. 582; am. 1983, ch. 139, § 5, p. 336; am. 1990, ch. 111, § 4, p. 222; am. 1991, ch. 138, § 2, p. 325; am. 1992, ch. 280, § 1, p. 857; am. 1995, ch. 62, § 3, p. 145;

am. 1996, ch. 237, § 3, p. 766; am. 2000, ch. 122, § 3, p. 269; am. 2001, ch. 149, § 3, p. 525; am. 2007, ch. 54, § 2, p. 126; am. 2008, ch. 135, § 2, p. 381; am. 2008, ch. 204, § 1, p. 655; am. 2010, ch. 130, § 1, p. 276; am. 2011, ch. 78, § 1, p. 163.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

Prior Laws.

Former § 54-2105 was repealed. See Prior Laws, § 54-2101.

Amendments.

The 2007 amendment, by ch. 54, added the last two sentences in subsection (8)(g); and merged part of former paragraph (8)(g) with (8)(h), deleting "hold hearings on all matters properly brought before the board" preceding "and in connection thereto".

This section was amended by two 2008 acts

which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 135, in subsection (4), substituted "except as otherwise provided by the open meeting law, chapter 23, title 67, Idaho Code" for "except that the board may meet in closed session to prepare, approve, administer or grade examinations; to deliberate the qualifications of an applicant for a license or certification; to conduct deliberations in disciplinary proceedings; to consider investigatory matters; or as otherwise allowed by law."

The 2008 amendment, by ch. 204, rewrote subsection (8)(i), which formerly read: "Em-

ploy full-time or part-time personnel, professional, clerical or special, necessary to effectuate the provisions of this chapter and the rules of the board and purchase or rent necessary office space, equipment and supplies.”

The 2010 amendment, by ch. 130, added the last two sentences in paragraph (8)(c).

The 2011 amendment, by ch. 78, deleted former paragraph (8)(f), which read: “Establish a schedule of fees for licensing, certifying and registering veterinarians, veterinary technicians, euthanasia agencies and euthanasia technicians, as well as for the review,

approval and administration of national licensing and certification examinations”, and redesignated the subsequent paragraphs accordingly.

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

For more on the Idaho veterinary medical association, see <http://www.ivma.org>.

For more on the educational commission for foreign veterinary graduates, see <http://www.avma.org/education/ecfvug>.

54-2106. Emergency veterinary facilities — On-call emergency services — Requirements. — The following requirements shall apply to:

(1) Emergency veterinary facilities:

(a) All advertisements for such facilities shall specify and clearly state the hours of operation and the address and telephone number of the facility; and

(b) At least one (1) veterinarian and a qualified staff member shall be on the premises during all stated hours of operation. A sufficient quantity of instrumentation, medications and supplies, and sufficient number of additional veterinarian(s) and support staff, as required to provide an appropriate level of emergency care, shall be on the premises during all stated hours of operation.

(2) On-call emergency services:

(a) All advertisements for such services shall specify and clearly state that the emergency services are provided on an on-call basis and that there is no veterinarian on premises other than during regular hours of operation; and

(b) Shall not be advertised as an emergency veterinary facility.

History.

I.C., § 54-2106, as added by 2006, ch. 139, § 2, p. 395.

STATUTORY NOTES

Prior Laws.

Former § 54-2106, which comprised 1971, ch. 173, § 6, p. 812; am. 1983, ch. 139, § 6, p. 336; am. 1990, ch. 111, § 5, p. 222, was

repealed by S.L. 1995, ch. 62, § 4, effective July 1, 1995.

Another former § 54-2106 was repealed. See Prior Laws, § 54-2101.

54-2107. License application — Contents — Fee. — Any person desiring a license to practice veterinary medicine in this state shall make written application to the board and shall bear the burden of substantiating to the board the license application requirements. To apply for a veterinary license, the applicant shall complete the “application for licensure to practice veterinary medicine and surgery” available from the board office. A completed application shall contain the applicant’s notarized signature and shall include:

(1) A copy of a birth certificate or current passport proving that the applicant is twenty-one (21) years of age or more.

(2) Notarized affidavits issued during the year preceding licensure from two (2) veterinarians currently licensed and in good standing in any state attesting to the fact that the applicant is of good moral character.

(3) A certified copy of a veterinary school diploma or transcript from an accredited or approved school of veterinary medicine or a letter from an accredited or approved school of veterinary medicine verifying satisfactory graduation by the applicant or, if a graduate of a nonaccredited or nonapproved school, a letter from the educational commission for foreign veterinary graduates (ECFVG) certifying completion of the ECFVG program or a copy of the ECFVG certificate or by completion of any educational equivalency program established for the purpose of evaluating an individual's educational knowledge and clinical skills as they relate to the practice of veterinary medicine, and as approved and outlined by the rules of the board.

(4) Passing scores on the national examinations developed by the national board examination committee, its designee or any other examination committee or organization approved by the board, including, but not limited to: the national board examination (NBE) and the clinical competency test (CCT), or the north American veterinary licensing examination (NAVLE), which may be taken in any state.

(5) After November 1, 2000, applicants who have taken their national examinations prior to this date and have not taken and passed the clinical competency test (CCT) may, in lieu of a passing score on the CCT, provide the following documentation from the licensing board in the state in which they are currently actively practicing or from the veterinary information verifying agency of the American association of veterinary state boards:

(a) Verification of seven (7) years of continuous, active practice in the same state or states where they have practiced for the past seven (7) years immediately preceding application for licensure in this state, and provided that the requirements for licensure in the state or states are similar to those in Idaho; and

(b) Verification of no disciplinary action taken against the applicant's license to practice veterinary medicine during the same seven (7) year period immediately preceding application for a veterinary license in this state.

(c) The practice of applicants licensed under this provision will be limited to the same fields of veterinary medicine as they have practiced in another state or states during the seven (7) year period immediately preceding application for a veterinary license in this state.

(6) A passing score of at least ninety percent (90%) correct on the Idaho jurisprudence examination.

(7) Written verification of license in good standing from the licensing organization in any state or states in which the applicant has held a license or as provided by the veterinary information verifying agency of the American association of veterinary state boards.

(8) The license application fee and first year's license fee in the amount established in the rules adopted by the board.

(9) Any additional information that the board may request.

(10) Application materials will be valid and maintained at the board office for a period of one (1) year.

The board will review applications and issue licenses in January and June of each year. Applicants shall have their completed applications at the board office by the first day of January or June, except as specified in other sections of this chapter or by board rule. If an applicant is found not qualified, the board shall immediately notify the applicant in writing of such finding and the grounds therefor. An applicant denied licensure may request a hearing pursuant to the procedures set forth in chapter 52, title 67, Idaho Code. Any applicant who is denied licensure shall be allowed the return of the license fee portion of the application fee.

Any applicant taking and passing the Idaho jurisprudence examination and not wanting to be licensed at the next review by the board, shall be allowed the return of the license fee portion of the application fee only.

History.

1971, ch. 173, § 7, p. 812; am. 1976, ch. 166, § 18, p. 596; am. 1983, ch. 139, § 7, p. 336; am. 1990, ch. 111, § 6, p. 222; am. 1993, ch.

72, § 3, p. 189; am. 1995, ch. 62, § 5, p. 145; am. 2000, ch. 122, § 4, p. 269; am. 2001, ch. 149, § 4, p. 525; am. 2010, ch. 103, § 1, p. 200.

STATUTORY NOTES

Prior Laws.

Former § 54-2107 was repealed. See Prior Laws, § 54-2101.

Amendments.

The 2010 amendment, by ch. 103, deleted "at any time (no time limit)" from the end in subsection (4).

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

For more on the national board of veteri-

nary medical examiners, see <http://www.nbvme.org>.

The national board examination and the clinical competency test, referred to in subsection (4), were replaced by the north American veterinary licensing examination in 2000. See <http://nbvme.org/?id=12&page=NALVE>.

For more on the veterinary information verifying agency, see <http://www.aavsb.org/VIVA>.

For more on the educational commission for foreign veterinary graduates, see <http://www.avma.org/education/ecfvag>.

RESEARCH REFERENCES

Am. Jur. — 78 Am. Jur. 2d, Veterinarians, § 3.

C.J.S. — 70 C.J.S., Physicians and Surgeons, § 11 et seq.

54-2108. Criminal background checks for licensure. — (1) All applicants for original licensure or certification, or for reinstatement after the license or certification has lapsed pursuant to section 54-2112(3), Idaho Code, must submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database.

(2) For purposes of complying with this section, each such applicant must:

(a) Submit to the Idaho board of veterinary medicine a full set of the applicant's fingerprints for forwarding to the Idaho state police for appropriate processing by the Idaho state police and the federal bureau of investigation; and

(b) Submit to the Idaho board of veterinary medicine for forwarding to the Idaho state police and the federal bureau of investigation the full amount of the processing fees charged by these agencies.

(3) This section shall apply to individuals only. This section shall not apply to entities applying for a certificate as a certified euthanasia agency.

History.

I.C., § 54-2108, as added by 2009, ch. 83,
§ 1, p. 234.

STATUTORY NOTES

Prior Laws.

Former § 54-2108, which comprised 1971, ch. 173, § 8, p. 812; am. 1974, ch. 13, § 153, p. 138; am. 1983, ch. 139, § 8, p. 336; am. 1990, ch. 111, § 7, p. 222, was repealed by S.L. 1993, ch. 72, § 1, effective March 18, 1993.

Another former § 54-2108 was repealed. See Prior Laws, § 54-2101.

Compiler's Notes.

The Idaho central criminal history database, referred to in subsection (1), is the

state's central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.idaho.gov/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in subsection (1), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjis/iafis.htm>.

54-2109. License without national board examination. [Repealed.]

STATUTORY NOTES

Prior Laws.

Another § 54-2109 was repealed in 1971. See Prior Laws, § 54-2101.

Compiler's Notes.

This section, which comprised 1971, ch.

173, § 9, p. 812; am. 1983, ch. 139, § 9, p. 336; am. 1990, ch. 111, § 8, p. 222, was repealed by S.L. 1993, ch. 72, § 1, effective March 18, 1993.

54-2110. License without clinical competency test (CCT). —

(1) The board may, upon payment of the fee prescribed under section 54-2107, Idaho Code, license without the clinical competency test (CCT) any person who is a diplomate with current certification from a specialty board approved by the American veterinary medical association. The applicant shall fulfill all requirements for licensure with the exception of a passing score on the clinical competency test (CCT) and shall provide verification of a current certification from a specialty board approved by the American veterinary medical association. The veterinary practice of any person who is licensed pursuant to this subsection is limited to referrals in the specialty in which the person is board certified.

(2) After November 1, 2000, the board may, upon payment of the fee prescribed under section 54-2107, Idaho Code, license without the clinical competency test (CCT) any person who has taken their national examinations prior to this date and has not taken and passed the CCT but has fulfilled, in addition to the other requirements for licensure, the requirements of section 54-2107(5), Idaho Code.

(3) The board may require a personal interview of any or all applicants under this section.

History.

I.C., § 54-2110, as added by 1990, ch. 111, § 9, p. 222; am. 1993, ch. 72, § 4, p. 189; am.

2000, ch. 122, § 5, p. 269; am. 2001, ch. 149, § 5, p. 525.

STATUTORY NOTES**Prior Laws.**

Former § 54-2110, which comprised 1971, ch. 173, § 10, p. 812, was repealed by S.L. 1983, ch. 139, § 10.

Another former § 54-2110 was repealed. See Prior Laws, § 54-2101.

Compiler's Notes.

Former § 54-2110, as enacted by S.L. 1983, ch. 139, § 11, was amended and redesignated as § 54-2111 by § 10 of S.L. 1990, ch. 111.

54-2111. Temporary permit. — The board may, at its discretion, issue a temporary permit to an applicant who has passed the NBE and Idaho jurisprudence exam but who has not yet taken the CCT, or to a new graduate, or a currently practicing veterinarian licensed in another state or states, who has fulfilled the requirements for licensure in this state or to a graduate of a nonaccredited or nonapproved school of veterinary medicine that has fulfilled the requirements of section 54-2107, Idaho Code, and the rules of the board. Temporary permits shall be valid until the next license application review by the board or for no more than one (1) year, during which time the applicants issued a temporary permit without having taken the CCT or fulfilling the requirements of section 54-2107(5), Idaho Code, shall take and pass the CCT. Under no circumstances shall a second temporary permit be issued to the same person, except in the case of a temporary permit issued to a graduate of a nonaccredited or nonapproved school of veterinary medicine, which may be renewed for up to three (3) years. If, at the end of the three (3) year period, the applicant has completed the requirements of the approved educational equivalence program, but has not received official notification, the expiration date for the temporary permit may be extended until official notification is received. A temporary permit shall not be issued to any applicant whose license has been revoked in any state for a reason other than nonpayment of license renewal fees. An applicant granted a temporary permit shall provide verification that during the twelve (12) months immediately preceding issuance of the temporary permit he has been in active veterinary practice in another state or shall work under the professional supervision of an actively licensed veterinarian. Pursuant to United States department of agriculture veterinary services memorandum number 572.1, an applicant working under a supervised temporary permit will not be allowed to become federally accredited in Idaho until the first year's license has been granted.

History.

I.C., § 54-2110, as added by 1983, ch. 139, § 11, p. 336; am. and redesi. 1990, ch. 111,

§ 10, p. 222; am. 1993, ch. 72, § 5, p. 189; am. 1995, ch. 62, § 6, p. 145; am. 2000, ch. 122, § 6, p. 269; am. 2001, ch. 149, § 6, p. 525.

STATUTORY NOTES

Prior Laws.

Former § 54-2111 was repealed. See Prior Laws, § 54-2101.

Compiler's Notes.

This section was formerly compiled as § 54-2110.

Another former § 54-2111 was amended

and redesignated as § 54-2112 by § 11 of S.L. 1990, ch. 111.

The national board examination and the clinical competency test, referred to in this section, was replaced by the north American veterinary licensing examination in 2000. See <http://nbvme.org/?id=12&page=NALVE>.

54-2112. Expiration of license or certification — Notice — Renewal — Inactive status. — (1) All licenses and certifications shall expire annually on July 1 unless renewed in a timely manner by submission of the annual renewal form prescribed by the board, proof of completion of the appropriate hours of continuing education, by meeting other requirements as defined in the rules adopted by the board and payment of the renewal fee established and published by the board.

(2) An expired license or certification may be reinstated by paying the established late fee and renewal fee, and by fulfilling the other requirements of this section.

(3) An expired license or certification must be reinstated prior to August 1 of the year in which the license or certification was issued. Licenses and certifications not reinstated prior to August 1 will lapse. Individuals whose licenses or certifications have lapsed must make application to the board as if for a new license or certification.

(4) Once a license or certification has expired or lapsed, the person or agency may not practice veterinary medicine or veterinary technology or function as a certified euthanasia technician or agency until the license or certification has been reinstated or until the person or agency has applied for and received a new license or certification.

(5) Any veterinarian licensed in Idaho who advises the board, in writing, that he wishes to remain licensed in this state, but does not intend to actively practice veterinary medicine in the state of Idaho and therefore does not intend to meet the licensing requirements for an active license for the current licensing year, shall be transferred from active to inactive status and shall be required to pay inactive status fees as prescribed in the rules of the board. Any person may transfer from inactive to active status by making written application for reinstatement to active status, paying all required fees and by meeting other requirements for reinstatement as defined in the rules of the board.

History.

1971, ch. 173, § 11, p. 812; am. 1974, ch. 13, § 154, p. 138; am. 1983, ch. 139, § 12, p. 336; am. and redesign. 1990, ch. 111, § 11, p. 222;

am. 1993, ch. 72, § 6, p. 189; am. 1995, ch. 62, § 7, p. 145; am. 2000, ch. 122, § 7, p. 269; am. 2001, ch. 149, § 7, p. 525; am. 2007, ch. 54, § 3, p. 126.

STATUTORY NOTES

Prior Laws.

Another former § 54-2112 was repealed. See Prior Laws, § 54-2101.

Amendments.

The 2007 amendment, by ch. 54, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

This section was formerly compiled as § 54-2111.

Former § 54-2112, as enacted by S.L. 1971, ch. 173, § 12, was amended and redesignated as § 54-2113 by § 12 of S.L. 1990, ch. 111 and, then, subsequently amended and redesignated as § 54-2115 by S.L. 2000, Chapter 122.

Effective Dates.

Section 7 of S.L. 1993, ch. 72 declared an emergency. Approved March 18, 1993.

54-2113. Corporate practice. — (1) A veterinary medical practice may be conducted only as a sole proprietorship, as a partnership or as a professional service corporation as defined in chapter 13, title 30, Idaho Code. No business corporation, other than a professional service corporation, shall be organized for the practice of veterinary medicine or shall provide veterinary medical services.

(2) A not-for-profit corporation may own property in connection with a veterinary medical facility or animal shelter, provided that an actively licensed veterinarian makes all the decisions pertaining to diagnosis, care and treatment of the patients.

History.

I.C., § 54-2113, as added by 2000, ch. 122, § 8, p. 269.

STATUTORY NOTES

Prior Laws.

A former § 54-2113 was repealed. See Prior Laws, § 54-2101.

Compiler's Notes.

Former § 54-2113, as enacted by S.L. 1971, ch. 173, § 13, was amended and redesignated as § 54-2114 by § 13 of S.L. 1990, ch. 111

and, then, subsequently repealed by S.L. 1995, ch. 62, § 9.

Another former § 54-2113, enacted as § 54-2112 by S.L. 1971, ch. 173, § 12, and amended and redesignated as § 54-2113 by S.L. 1990, ch. 111, § 12, was amended and redesignated as § 54-2115 by § 10 of S.L. 2000, ch. 122.

54-2114. Unauthorized practice a misdemeanor. — (1) Anyone not authorized to practice veterinary medicine under this chapter in which an active veterinary license in this state is a prerequisite to practice, who does practice or offers to practice or holds himself out as being able to practice veterinary medicine, or who practices veterinary medicine as an exempt person during the time when his license is expired, suspended, revoked or annulled, shall be practicing in violation of this chapter and is subject to the provisions of section 54-2118, Idaho Code.

(2) Any licensed veterinarian that aids or abets an unlicensed or uncertified person to practice veterinary medicine or employs or holds such unlicensed person out as being able to practice veterinary medicine, shall be subject to the provisions of sections 54-2115 and 54-2118, Idaho Code.

(3) Anyone not authorized to practice veterinary medicine under this chapter in which an active veterinary license in this state is a prerequisite

to practice, who offers services in the field of veterinary medicine to an individual in this state, through telephonic, electronic or other means, regardless of the location or profession of this individual, shall be practicing in violation of this chapter and be subject to the provisions of section 54-2118, Idaho Code.

History.

I.C., § 54-2114, as added by 2000, ch. 122,
§ 9, p. 269; am. 2001, ch. 149, § 8, p. 525.

STATUTORY NOTES

Prior Laws.

Former § 54-2114, enacted as § 54-2113 and which comprised 1971, ch. 173, § 13, p. 812; am. 1974, ch. 13, § 155, p. 138; am. 1983, ch. 139, § 14, p. 336; am. and redesign. 1990, ch. 111, § 13, p. 222; am. 1993, ch. 216, § 75, p. 587, was repealed by S.L. 1995, ch. 62, § 9, effective July 1, 1995.

A former § 54-2114 was repealed. See Prior Laws § 54-2101.

Compiler's Notes.

Another former § 54-2114, as enacted by S.L. 1971, ch. 173, § 14, was amended and redesignated as § 54-2115 by S.L. 1990, ch. 111, § 14 and, then, subsequently amended and redesignated as § 54-2116 by S.L. 2000, chapter 122.

54-2115. Grounds for discipline. — The board may refuse to issue, renew or reinstate the license of a veterinarian, or may deny, revoke, suspend, sanction, reprimand, restrict, limit, place on probation or require voluntary surrender of, the license of a veterinarian, and may fine and impose other forms of discipline and enter into consent agreements and negotiated settlements with any licensed veterinarian pursuant to the procedures set forth in chapter 52, title 67, Idaho Code, for any or all of the following reasons:

(1) The employment of fraud, misrepresentation of a material fact or deception by an applicant or licensee in:

(a) Securing or attempting to secure the issuance or renewal of a license; or

(b) Statements regarding the veterinarian's skills or efficacy or value of any treatment provided or to be provided or using any false, fraudulent, misleading or deceptive statement connected with the practice of veterinary medicine including, but not limited to, false or misleading advertising.

(c) Participating in a breach of the north American veterinary licensing examination (NAVLE). The following activity is a violation and constitutes grounds for discipline under this subsection:

(i) Written notification from the national board examination committee (NBEC), or its designee, that the NBEC has nullified the NAVLE score of the applicant or licensee because the applicant or licensee has admitted cheating or committing other improprieties in the taking, administering or processing of the NAVLE; or

(ii) Written notification from the NBEC, or its designee, that the NBEC has obtained a court judgment against the applicant or licensee after proving allegations that the applicant or licensee cheated or committed

other improprieties in the taking, administering or processing of the NAVLE.

(2) Unethical or unprofessional conduct, as defined by section 54-2103, Idaho Code, the rules of the board, and the code of professional conduct established by the rules of the board.

(3) Being found guilty, convicted, placed on probation, having entered a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure a defendant's appearance, or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following:

(a) Any felony as defined in chapter 1, title 18, Idaho Code;

(b) Any other criminal act which in any way is related to the practice of veterinary medicine as defined by section 54-2103, Idaho Code; or

(c) Any violation of any federal or state statute, rule or regulation regulating narcotics, dangerous drugs or controlled substances.

(4) Medical incompetence in the practice of veterinary medicine, as defined by section 54-2103, Idaho Code.

(5) Physical or mental incompetence, in the practice of veterinary medicine, as defined in section 54-2103, Idaho Code.

(6) Malpractice or negligence, in the practice of veterinary medicine, as defined in section 54-2103, Idaho Code.

(7) Aiding or abetting an unlicensed or uncertified person to practice veterinary medicine or veterinary technology or employing or holding such unlicensed person out as being able to practice veterinary medicine or veterinary technology.

(8) Fraud, dishonesty, failure to report, or gross negligence in the inspection of animals and animal products intended for human consumption, issuance of health or inspection certificates, in the application, vaccination, treatment or reporting of any test for disease in animals, and in reporting any contagious or infectious disease.

(9) Failure to comply with the veterinary standards of practice, as established by board rule.

(10) Failure to comply with the recordkeeping requirements, as established by the rules of the board.

(11) Cruelty to animals including, but not limited to, the intentional and malicious infliction of pain, physical suffering, injury or death, performance of experimental treatments without the owner's consent, deprivation of necessary sustenance, withholding of appropriate pain medications or levels of pain medications, or the administration of unnecessary procedures and treatment.

(12) Infliction of pain on any animal in self-defense, or to prevent physical harm to others, or in accordance with local custom and culture in moving, handling, treating, dehorning, castrating or performing other procedures on livestock, shall not be considered cruel or physically abusive unless done in an unnecessary or intentionally malicious manner. This provision does not alter section 25-3514, Idaho Code.

(13) Revocation, suspension, disciplinary sanction, other adverse action, or failure to report any such adverse action to the board, including voluntary

surrender of a license or certificate by virtue of which one is licensed to practice veterinary medicine in that jurisdiction or country on grounds other than nonpayment of renewal fees.

(14) Falsifying or failing to fulfill the continuing education requirements, as established by the rules of the board.

(15) The use, prescription or sale of any controlled substance, veterinary legend/prescription drug or prescription of an extra-label use for any human or veterinary drug without a valid veterinarian/client/patient relationship.

(16) Charging for services which were not rendered, charging for services that were not documented in the patient's records, or charging for services that were not consented to by the owner of the patient or the owner's agent.

(17) Failure to timely furnish details of a patient's medical record to another veterinarian, hospital, clinic, owner or owner's agent.

(18) Failure of any applicant or licensee to cooperate with the board during any investigation, even if such investigation does not personally concern the applicant or licensee.

(19) Failure to comply with the terms of any order, negotiated settlement or probationary agreement of the board or to pay the costs assessed in a disciplinary matter pursuant to section 54-2105, Idaho Code.

(20) Failure to comply with the terms for renewal or to timely pay license, certification or registration renewal fees, as specified by section 54-2112, Idaho Code, and the rules of the board.

(21) Failure of a licensed veterinarian to exercise proper supervision, as defined by the rules of the board, when supervising a temporary licensee or holder of a temporary certification, a certified veterinary technician, a veterinary technician, a veterinary assistant, a certified euthanasia technician or other person, except in an emergency situation as defined in section 54-2103, Idaho Code.

(22) Delegation of an act pertaining to the practice of veterinary medicine or veterinary technology to an unqualified person, regardless of the supervision provided.

(23) Aiding or abetting or violating any of the provisions of this chapter or any lawful rule or order of the board.

History.

1971, ch. 173, § 12, p. 812; am. 1983, ch. 139, § 13, p. 336; am. and redesign. 1990, ch. 111, § 12, p. 222; am. 1993, ch. 71, § 1, p. 188; am. 1995, ch. 62, § 8, p. 145; am. and redesign.

2000, ch. 122, § 10, p. 269; am. 2001, ch. 149, § 9, p. 525; am. 2007, ch. 54, § 4, p. 126; am. 2010, ch. 105, § 3, p. 207; am. 2011, ch. 79, § 1, p. 166.

STATUTORY NOTES

Prior Laws.

A former § 54-2115 was repealed. See Prior Laws, § 54-2101.

Amendments.

The 2007 amendment, by ch. 54, deleted "Overtreating, unless the services were contracted for in advance" from the beginning of subsection (16).

The 2010 amendment, by ch. 105, in sub-

sections (21) and (22), substituted "person" for "employee."

The 2011 amendment, by ch. 79, added paragraph (1)(c).

Compiler's Notes.

This section was originally compiled as § 54-2112 and was amended and redesignated as § 54-2113 by S.L. 1990, ch. 111, § 12, before being amended and redesignated as § 54-2115 by S.L. 2000, ch. 122, § 10.

Former § 54-2115, as enacted by S.L. 1971, ch. 173, § 15 was amended and redesignated as § 54-2116, by § 15 of S.L. 1990, ch. 111 and then amended and redesignated as § 54-2117 by S.L. 2000, ch. 122, § 12.

Another former § 54-2115, enacted as § 54-2114 by S.L. 1971, ch. 173, § 14 and amended and redesignated as § 54-2115 by S.L. 1990, ch. 111, § 14, was amended and redesignated as § 54-2116 by § 11 of S.L. 2000, ch. 122.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

For more on the national board of veterinary medical examiners, see <http://www.nbvme.org>.

The national board examination and the clinical competency test, referred to in this section, were replaced by the north American veterinary licensing examination in 2000. See <http://nbvme.org/?id=12&page=NALVE>.

Effective Dates.

Section 2 of S.L. 1993, ch. 71 declared an emergency. Approved March 18, 1993.

JUDICIAL DECISIONS

Vacated Felony Conviction.

A felony conviction which has been vacated and the charge dismissed after the entry of a not guilty plea pursuant to § 19-2604 cannot

be the basis for revocation of a veterinary license. *Manners v. State Bd. of Veterinary Medicine*, 107 Idaho 950, 694 P.2d 1298 (1985).

RESEARCH REFERENCES

Am. Jur. — 78 Am. Jur. 2d, Veterinarians, § 5.

54-2115A. Maximum time periods for suspension, revocation and reapplication. — The board is authorized to enter an order that suspends or revokes an existing license or certification based upon a violation of the provisions of chapter 21, title 54, Idaho Code, or a board rule, for a maximum period of ten (10) years. In the event the board enters an order that denies an application for licensure or certification, the board is authorized to impose a restriction on reapplication for a maximum period of up to ten (10) years.

History.

I.C., § 54-2115A, as added by 2011, ch. 93, § 1, p. 202.

54-2116. Judicial review. — Any party aggrieved by a decision of the board may seek judicial review of the decision pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code.

History.

1971, ch. 173, § 14, p. 812; am. and redesign. 1990, ch. 111, § 14, p. 222; am. 1993, ch. 216,

§ 76, p. 587; am. 1995, ch. 62, § 10, p. 145; am. and redesign. 2000, ch. 122, § 11, p. 269.

STATUTORY NOTES

Prior Laws.

A former § 54-2116 was repealed. See Prior Laws, § 54-2101.

Compiler's Notes.

This section was originally enacted by S.L. 1971, ch. 173, § 14 and codified as § 54-2114. The section was then amended and redesignated as § 54-2115 by S.L. 1990, ch. 111,

§ 14. Finally, the section was amended and redesignated as § 54-2116 by S.L. 2000, ch. 122, § 11.

Former § 54-2116, as enacted by S.L. 1971, ch. 173, § 16, was amended and redesignated as § 54-2117 by § 16 of S.L. 1990, ch. 111 and, then, subsequently amended and redesignated as § 54-2118 by S.L. 2000, chapter

122. Another former § 54-2116, enacted as § 54-2115 by S.L. 1971, ch. 173, § 15 and amended and redesignated as § 54-2116 by S.L. 1990, ch. 111, § 15, was amended and redesignated as § 54-2117 by § 12 of S.L. 2000, ch. 122.

54-2117. Relicensing and reinstatement. — Any person whose license is suspended or revoked may, at the discretion of the board, be relicensed or reinstated at any time with or without an examination, by majority vote of the board on written application made to the board showing cause justifying relicensing or reinstatement.

In reinstating a license which has been suspended or revoked under section 54-2115, Idaho Code, the board may impose terms and conditions to be followed by the licensee after the license has been reinstated. The authority of the board to impose terms and conditions includes, but is not limited to, the following:

- (1) Requiring the licensee to obtain additional professional training and to pass an examination upon completion of the training.
- (2) Requiring the licensee to pass an oral, written, practical or clinical examination, or any combination thereof to determine present fitness to engage in the practice of veterinary medicine.
- (3) Restricting or limiting the extent, scope, or type of practice of the licensee.
- (4) Requiring the licensee to obtain professional counseling and undergo and maintain treatment and testing for alcohol or drug related problems.

History. 111, § 15, p. 222; am. 1995, ch. 62, § 11, p. 1971, ch. 173, § 15, p. 812; am. 1983, ch. 145; am. and redesign. 2000, ch. 122, § 12, p. 139, § 15, p. 336; am. and redesign. 1990, ch. 269.

STATUTORY NOTES

Prior Laws. A former § 54-2117 was repealed. See Prior Laws, § 54-2101.

Compiler's Notes. This section was originally enacted by S.L. 1971, ch. 173, § 15 and codified as § 54-2115. The section was then amended and redesignated as § 54-2116 by S.L. 1990, ch. 111, § 15. Finally, the section was amended and redesignated as § 54-2117 by S.L. 2000, ch. 122, § 12.

Former § 54-2117, as enacted by S.L. 1971, ch. 173, § 17, was amended and redesignated as § 54-2118 by § 17 of S.L. 1990, ch. 111 and, then, subsequently amended and redesignated as § 54-2119 by S.L. 2000, chapter 122.

Another former § 54-2117, enacted as § 54-2116 by S.L. 1971, ch. 173, § 16 and amended and redesignated as § 54-2117 by S.L. 1990, ch. 111, § 16, was amended and redesignated as § 54-2118, by § 13 of S.L. 2000, ch. 122.

54-2118. Violations of chapter — Remedies and penalties. — In addition to the disciplinary actions set forth in section 54-2115, Idaho Code:

(1) Administrative actions.

(a) Any person violating the provisions of this chapter, or violating a rule promulgated by the board to implement the provisions of this chapter may be fined by the board or its duly authorized agent not more than five thousand dollars (\$5,000) for each offense and shall be liable for investigatory expenses and reasonable paralegal and attorney's fees, and pro-

vided that each act on each day of violation shall constitute a separate offense. Imposition of a fine may be made in conjunction with any other board administrative action. No fine may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If a person fined fails to fully pay the fine, investigatory expenses or reasonable paralegal and attorney's fees, the board may recover such amount by action in the appropriate district court.

(b) Notwithstanding the provisions of subsection (1)(a) of this section, any person who has violated the recordkeeping or continuing education requirements imposed by this chapter or the rules of the board may, in lieu of disciplinary proceedings under this chapter or the Idaho administrative procedure act, elect to pay the board a civil penalty to be determined by the board, or its authorized agent, in an amount between five hundred dollars (\$500) and one thousand dollars (\$1,000), under the following terms and conditions:

- (i) The person must not have been disciplined by the board for any reason within the past five (5) years;
- (ii) The person must not have previously elected to pay a penalty under this section;
- (iii) The person is not currently on probation by the board;
- (iv) The person is not currently under investigation by the board for an offense other than the recordkeeping or continuing education violation; and
- (v) The person must fully comply with the board's instructions on remedying the recordkeeping or continuing education violation.

Upon successful completion of the above terms and conditions and payment of the civil penalty, the violation shall not be considered "discipline," shall not be reported to any national disciplinary database, and documents and records related to the violation shall be exempt from disclosure under chapter 3, title 9, Idaho Code.

(2) Civil court proceedings. The board, the attorney general's office, a county prosecuting attorney or any citizen of this state may bring an action in the district court of either Ada county or any county where a violation is occurring, to enjoin any person from practicing veterinary medicine or practicing as a certified veterinary technician, certified euthanasia technician or any agency operating as a certified euthanasia agency without a currently valid, active license, certification, temporary permit or temporary certification. If the court finds that the person is violating the provisions of this chapter, it shall enter an injunction restraining that person from such unlawful acts.

(3) Criminal actions. Any person who practices veterinary medicine, any person practicing as a certified veterinary technician, a certified euthanasia technician or any agency operating as a certified euthanasia agency without a currently valid, active license, certification, temporary permit or temporary certification shall be guilty of a misdemeanor and upon conviction or withheld judgment shall be fined not less than one hundred dollars (\$100), nor more than ten thousand dollars (\$10,000), or incarcerated for no more

than one hundred eighty (180) days, or both fined and incarcerated, and provided that each act of such unlawful practice shall constitute a distinct and separate offense.

(4) The remedies set forth in this section are not mutually exclusive and a successful action on any one (1) remedy does not preclude action on some or all of the other remedies.

History.

1971, ch. 173, § 16, p. 812; am. 1983, ch. 139, § 16, p. 336; am. and redesign. 1990, ch. 111, § 16, p. 222; am. 1995, ch. 62, § 12, p.

145; am. and redesign. 2000, ch. 122, § 13, p. 269; am. 2001, ch. 149, § 10, p. 525; am. 2010, ch. 104, § 1, p. 201.

STATUTORY NOTES

Cross References.

Administrative procedure act, § 67-5201 et seq.

Attorney general, § 67-1401 et seq.

Prior Laws.

A former § 54-2118 was repealed. See Prior Laws, § 54-2101.

Amendments.

The 2010 amendment, by ch. 104, rewrote the section, providing a one-time opportunity for any person who has violated the recordkeeping or continuing education requirements of this chapter to elect to pay a civil penalty in lieu of a formal, disciplinary action.

Compiler's Notes.

This section was originally enacted by S.L.

1971, ch. 173, § 16 and codified as § 54-2116. The section was then amended and redesignated as § 54-2117 by S.L. 1990, ch. 111, § 116. Finally, the section was amended and redesignated as § 54-2118 by S.L. 2000, ch. 122, § 13.

Former § 54-2118, as enacted by S.L. 1983, ch. 139, § 18, was amended and redesignated as § 54-2119 by § 18 of S.L. 1990, ch. 111 and, then, subsequently was amended and redesignated as § 54-2124 by S.L. 2000, chapter 122.

Another former § 54-2118 enacted as § 54-2117 by S.L. 1971, ch. 173, § 17 and amended and redesignated as § 54-2118 by S.L. 1990, ch. 111, § 17, was amended and redesignated as § 54-2119 by § 14 of S.L. 2000, ch. 122.

RESEARCH REFERENCES

Am. Jur. — 78 Am. Jur. 2d, Veterinarians, § 6.

54-2119. Administration and enforcement of chapter. — This chapter shall be administered by the board.

History.

1971, ch. 173, § 17, p. 812; am. 1974, ch. 13, § 156, p. 138; am. 1983, ch. 139, § 17, p. 336;

am. and redesign. 1990, ch. 111, § 17, p. 222; am. and redesign. 2000, ch. 122, § 14, p. 269.

STATUTORY NOTES

Prior Laws.

A former § 54-2119 was repealed. See Prior Laws, § 54-2101.

Compiler's Notes.

This section was originally enacted by S.L. 1971, ch. 173, § 17 and codified as § 54-2117. The section was then amended and redesignated as § 54-2118 by S.L. 1990, ch. 111, § 17. Finally, the section was amended and redesignated as § 54-2119 by S.L. 2000, ch. 122, § 14.

Former § 54-2119, as amended by S.L. 1983, ch. 139, § 19, was amended and redesignated as § 54-2120 by § 19 of S.L. 1990, ch. 111 and, then, subsequently amended and redesignated as § 54-2121 by S.L. 2000, chapter 122.

Another former § 54-2119, enacted as § 54-2118 by S.L. 1983, ch. 139, § 18 and amended and redesignated as § 54-2119 by S.L. 1990, ch. 111, § 18, was amended and redesignated as § 54-2120 by § 15 of S.L.

2000, ch. 122.

Section 21 of S.L. 1971, ch. 173, read: "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Effective Dates.

Section 22 of S.L. 1971, ch. 173 provided that the act should take effect from and after July 1, 1971.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

54-2120. Attorney general's office to advise and represent. — The attorney general's office of the state of Idaho shall represent the board and shall give opinions on all questions of law arising out of the administration of the laws which it shall administer, and to act for, and on behalf of the board in all actions brought for or against it under the provisions of this chapter, or as otherwise provided by law.

History.

I.C., § 54-2118, as added by 1983, ch. 139, § 18, p. 336; am. and redesign. 1990, ch. 111,

§ 18, p. 222; am. and redesign. 2000, ch. 122, § 15, p. 269.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Prior Laws.

A former § 54-2120 was repealed. See Prior Laws, § 54-2101.

Compiler's Notes.

This section was originally enacted by S.L. 1983, ch. 139, § 18 and codified as § 54-2118.

The section was then amended and redesignated as § 54-2119 by S.L. 1990, ch. 111, § 18. Finally, the section was amended and redesignated as § 54-2120 by S.L. 2000, ch. 122, § 15.

Former § 54-2120, enacted as § 54-2119 by 1983, ch. 139, § 19 and amended and redesignated as § 54-2119 by S.L. 1990, ch. 111, § 19, was amended and redesignated as § 54-2121 by § 16 of S.L. 2000, ch. 122.

54-2121. Creation of state board of veterinary medicine account. — All moneys, including civil penalties collected under the provisions of this chapter shall be deposited in the state treasury to the credit of a separate account to be known as the "state board of veterinary medicine account," and all moneys as are now in or may hereafter come into the account are hereby appropriated to the board for carrying out the purposes and objectives of this chapter, and to pay all costs and expenses incurred in connection with the provisions of this chapter. All moneys in the occupational licenses account belonging to the state board of veterinary medicine as of July 1, 1983, are hereby transferred and appropriated to the state board of veterinary medicine account hereby created. Moneys shall be paid out of the account upon warrants drawn by the state controller upon presentation of proper vouchers approved by the board.

History.

I.C., § 54-2119, as added by 1983, ch. 139, § 19, p. 336; am. and redesign. 1990, ch. 111,

§ 19, p. 222; am. 1994, ch. 180, § 103, p. 420; am. and redesign. 2000, ch. 122, § 16, p. 269.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Compiler's Notes.

This section was originally enacted by S.L. 1983, ch. 139, § 19 and codified as § 54-2119. The section was then amended and redesignated as § 54-2120 by S.L. 1990, ch. 111, § 19. Finally, the section was amended and redesignated as § 54-2121 by S.L. 2000, ch. 122, § 16.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 103 of S.L. 1994, ch. 180 became effective January 2, 1995.

CHAPTER 22

PRACTICE OF PHYSICAL THERAPY

SECTION.

- 54-2201. Short title.
- 54-2202. Declaration of policy.
- 54-2203. Definitions.
- 54-2204. Exemptions.
- 54-2205. Physical therapy licensure board.
- 54-2206. Powers and duties of the board.
- 54-2207. Application for licensure and fees.
- 54-2208. Denial of application.
- 54-2209. Examinations.
- 54-2210. Qualifications for licensure.
- 54-2211. Qualifications for licensure by endorsement.
- 54-2212. Qualifications for licensure of foreign-educated physical therapists.
- 54-2213. Exemptions — Military, students, educators.

SECTION.

- 54-2214. License renewal.
- 54-2215. Renewal and reinstatement of licensure.
- 54-2216. Lawful practice of physical therapy.
- 54-2217. Use of titles and restrictions.
- 54-2218. Supervision of physical therapist assistants and supportive personnel.
- 54-2219. Grounds for disciplinary action.
- 54-2220. Discipline actions and procedures.
- 54-2221. Disciplinary actions — Penalties.
- 54-2222. Judicial review.
- 54-2223. Unlawful practice — Fines and penalties.
- 54-2224. Disposition of receipts — Expenses.

54-2201. Short title. — This chapter shall be known and may be cited as the “Physical Therapy Practice Act.”

History.

I.C., § 54-2201, as added by 2001, ch. 197, § 2, p. 666.

STATUTORY NOTES

Cross References.

Incorporation of professional service corporations, § 30-1301 et seq.

1963, ch. 127, § 1, p. 374, was repealed by S.L. 2001, ch. 197, § 1.

Prior Laws.

Former section 54-2201, which comprised

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 1, 3.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 10, 31, 50, 285.

54-2202. Declaration of policy. — To protect the public health, safety

and welfare, and to provide for state administrative supervision, licensure and regulation, every person practicing or offering to practice physical therapy who meets and maintains prescribed standards of competence and conduct shall be licensed as provided in this chapter. This chapter shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.

History.

I.C., § 54-2202, as added by 2001, ch. 197,
§ 2, p. 666.

STATUTORY NOTES**Prior Laws.**

Former section 54-2202, which comprised
1963, ch. 127, § 2, p. 374; am. 1979, ch. 185,

§ 1, p. 539, was repealed by S.L. 2001, ch.
197, § 1.

54-2203. Definitions. — As used in this chapter:

- (1) “Applicant” means a person applying for a license or permit under this chapter.
- (2) “Board” means the Idaho physical therapy licensure board.
- (3) “Bureau” means the bureau of occupational licenses.
- (4) “Department” means the department of self-governing agencies.
- (5) “License” means a document issued by the board to a person under this chapter authorizing the person to practice as a physical therapist or physical therapist assistant.
- (6) “Physical therapist” means a person licensed under the provisions of this chapter to engage in the practice of physical therapy.
- (7) “Physical therapist assistant” means a person who meets the requirements of this chapter and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist.
- (8) “Physical therapy” means the care and services provided by or under the direction and supervision of a physical therapist.
- (9) The “practice of physical therapy” means the exercise of the profession of physical therapy by a person who engages in the following health care activities:
 - (a) Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations, and disability or other health and movement related conditions in order to determine a diagnosis for physical therapy and prognosis for physical therapy, plan of therapeutic intervention, and to assess the ongoing effects of intervention.
 - (b) Alleviating impairments and functional limitations by designing, implementing and modifying therapeutic interventions that include, but are not limited to: therapeutic exercise; functional mobility training in self-care and in-home, community or work reintegration; manual therapy; assistive, adaptive, protective and supportive devices and equipment; bronchopulmonary hygiene; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and

patient related instruction; and to reduce the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and quality of life in all age populations. The practice of physical therapy shall not include the use of radiology, surgery or medical diagnosis of disease.

(c) Engaging in administration, consultation, testing, education and research as related to paragraphs (a) and (b) of this subsection.

(10) "Supportive personnel" means a person or persons trained under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks.

History.

I.C., § 54-2203, as added by 2001, ch. 197, § 2, p. 666; am. 2005, ch. 185, § 1, p. 568; am. 2006, ch. 116, § 1, p. 315.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former section 54-2203, which comprised I.C., § 54-2203, as added by 1979, ch. 185, § 3, p. 539; am. 1987, ch. 46, § 1, p. 74, was repealed by S.L. 2001, ch. 197, § 1.

Another former § 54-2203, which comprised S.L. 1963, ch. 127, § 3, p. 374, was repealed by S.L. 1979, ch. 185, § 2.

Amendments.

The 2006 amendment, by ch. 116, added present subsection (1); combined former subsections (1) and (2) as present subsection (2); added present subsections (3) to (5); redesignated former subsections (3) to (7) as present subsections (6) to (10); substituted "licensed under the provisions of this chapter to engage" for "who meets all the requirements of this chapter and who engages" in present subsection (6).

54-2204. Exemptions. — Nothing in this chapter shall be construed to restrict any persons licensed or regulated by the state of Idaho from engaging in the profession or practice for which they are licensed or regulated, including*, but not limited to, any athletic trainer, chiropractor, dentist, nurse, physician, podiatrist, occupational therapist, optometrist, osteopath, surgeon, or any other licensed or regulated practitioner of the healing arts, nor restrict employees working under the direct supervision of those persons referred to in this section, so long as such person does not hold himself or herself out as a physical therapist, physical therapist assistant or a person engaged in the practice of physical therapy.

History.

I.C., § 54-2204, as added by 2001, ch. 197, § 2, p. 666.

STATUTORY NOTES

Prior Laws.

Former section 54-2204, which comprised 1963, ch. 127, § 4, p. 374; am. 1979, ch. 185,

§ 4, p. 539, was repealed by S.L. 2001, ch. 197, § 1.

54-2205. Physical therapy licensure board. — (1) There is hereby established in the department of self-governing agencies a physical therapy licensure board. The board shall consist of five (5) members appointed by the governor, three (3) of whom shall be licensed physical therapists, one (1) of

whom may be a licensed physical therapist assistant or a licensed physical therapist, and one (1) of whom shall be a member of the public with an interest in the rights of the consumers of health services. All members of the board shall be residents of Idaho at the time of their appointment and for their term of service. The persons appointed to the board who are required to be licensed under this chapter shall have been engaged in rendering physical therapy or physical therapy assistant care services, respectively, to the public, in teaching, or in research in physical therapy or physical therapy assistant care services, respectively, for at least three (3) years immediately preceding their appointments. These members, excepting the public member, shall at all times be holders of valid licenses and be in good standing without restriction upon such license for the practice of physical therapy or physical therapy assistant, respectively, in Idaho.

(2) The governor, within sixty (60) days after the effective date of this act, shall appoint two (2) board members for a term of one (1) year; two (2) members for a term of two (2) years; and one (1) member for a term of three (3) years. Appointments made thereafter shall be for three (3) year terms, but no person shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed in this section.

(3) The members of the board shall be selected by the governor after considering a list of three (3) qualified applicants for each such vacancy submitted by the Idaho physical therapy association.

(4) The board, within sixty (60) days after the effective date of this act, and annually thereafter, shall hold a meeting and elect a chairman who shall preside at meetings of the board. In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the board shall constitute a quorum. Other meetings may be convened at the call of the chairman or upon the written request of any two (2) board members.

(5) Each member of the board shall be compensated as provided in section 59-509(n), Idaho Code.

(6) Members of the board shall disqualify themselves and, upon the motion of any interested party may, upon proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias that interferes with their fair and impartial service.

(7) The governor may remove any member of the board from the membership of the board who is guilty of malfeasance, misfeasance or nonfeasance.

History.

I.C., § 54-2205, as added by 2001, ch. 197,
§ 2, p. 666; am. 2005, ch. 185, § 2, p. 568; am.

2006, ch. 116, § 2, p. 315; am. 2009, ch. 95,
§ 1, p. 281.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

Prior Laws.

Former section 54-2205, which comprised 1963, ch. 127, § 5, p. 374; am. 1979, ch. 185, § 5, p. 539, was repealed by S.L. 2001, ch. 197, § 1.

Amendments.

The 2006 amendment, by ch. 116, deleted "licensure" preceding "board" throughout the section; in subsection (1), substituted "in the department of self-governing agencies a physical therapy licensure board" for "a physical therapy licensure board to the Idaho state board of medicine" and substituted "governor" for "board"; substituted "governor" for "board" near the beginning of subsection (2); substituted "governor" for "board" in subsection (3); deleted former subsection (6), which read: "The licensure board shall work in conjunction with the Idaho state board of medicine to enforce the provisions of this chapter and shall perform the duties and functions assigned to the licensure board by the board, including, but not limited to:

"(a) Evaluating the qualifications of applicants for licensure, administering examinations, and issuing and renewing licenses;

"(b) Performing investigations of misconduct and making recommendations regarding discipline;

"(c) Maintaining a list of licensed physical therapists and physical therapist assistants in this state;

"(d) Evaluating curricula of nationally accredited schools of physical therapy and physical therapy assistant;

"(e) Reviewing and recommending fees to be assessed by the board for the issuance and renewal of licenses; and

"(f) Establishing criteria and recommending administrative rules;"

redesignated former subsections (7) and (8) as present subsections (6) and (7); inserted "of the board" near the beginning of present subsection (6); and substituted "governor" for "board" near the beginning of present subsection (7).

The 2009 amendment, by ch. 95, substituted "section 59-509(n)" for "section 59-509(h)" in subsection (5).

Compiler's Notes.

The phrase "effective date of this act", in subsections (2) and (4), was added by S.L. 2005, Chapter 185, which was effective July 1, 2005.

For more on the Idaho physical therapy association, see <http://www.ptidaho.org>.

54-2206. Powers and duties of the board. — The board shall have the authority to administer, coordinate and enforce the provisions of this chapter. Such authority shall include, but not be limited to, the power to:

(1) Evaluate the qualifications of applicants for licensure, approve and administer examinations to test the knowledge and proficiency of applicants for licensure, and approve or deny the registration and issuance and renewal of licenses and permits;

(2) Authorize all disbursements necessary to carry out the provisions of this chapter;

(3) Promulgate rules not inconsistent with the laws of this state which are necessary to carry out the provisions of this chapter;

(4) Adopt rules providing for continuing education;

(5) Obtain restraining orders and injunctions prohibiting conduct in violation of the provisions of this chapter, conduct investigations, issue subpoenas, and examine witnesses and administer oaths, concerning practices which are alleged to violate the provisions of this chapter;

(6) Suspend or revoke or otherwise sanction licensees in the manner provided in this chapter, or place a person holding a license under this chapter on probation;

(7) Require as a condition of receiving or retaining a license issued under this chapter that restitution be paid to a consumer;

(8) Require the inspection of testing equipment and facilities of persons engaging in any practice pursuant to this chapter;

(9) As the board deems reasonable, take notice of and give effect to prior licenses issued to physical therapists and physical therapist assistants in the state of Idaho by the state board of medicine and such other actions, proceedings, orders or decisions of the state board of medicine involving complaints, investigations, discipline or other matters concerning physical therapists or physical therapist assistants; and

(10) Authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest.

History.

I.C., § 54-2206, as added by 2006, ch. 116,
§ 3, p. 315.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
State board of medicine, § 54-1805.

185, § 6, p. 539, was repealed by S.L. 2001,
ch. 197, § 1.

Prior Laws.

Another former § 54-2206, which comprised 1963, ch. 127, § 6, p. 374; am. 1979, ch.

Compiler's Notes.

Former § 54-2206 has been amended and redesignated as § 54-2207, pursuant to S.L. 2006, ch. 116, § 4.

54-2207. Application for licensure and fees. — An applicant for licensure as a physical therapist or physical therapist assistant shall file an application with the board on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's address, education, evidence of graduation from a nationally accredited school of physical therapy or nationally accredited school for physical therapist assistants with a curriculum acceptable to the board and a detailed summary of any other qualifications deemed relevant to licensure by the board. The application shall also require the disclosure of any criminal conviction or charge against the applicant other than minor traffic infractions, the disclosure of any disciplinary action against the applicant by any professional regulatory agency, including any agency within the state or any other state, and the disclosure of any denial of registration or licensure by any state or district regulatory body. A nonrefundable application fee and payment for the cost of the examination shall accompany the completed written application. Fees shall be established by the administrative rules of the board.

History.

I.C., § 54-2206, as added by 2001, ch. 197,

§ 2, p. 666; am. and redesign. 2006, ch. 116,
§ 4, p. 315.

STATUTORY NOTES

Prior Laws.

Another former § 54-2207, which comprised 1963, ch. 127, § 7, p. 374; am. 1971, ch. 90, § 1, p. 195, was repealed by S.L. 2001, ch. 197, § 1.

bered the section from § 54-2206; and deleted the former next-to-the-last sentence, which read: "An applicant shall also furnish not less than two (2) references from persons having personal knowledge of the applicant's moral character".

Amendments.

The 2006 amendment, by ch. 116, renun-

Compiler's Notes.

Former § 54-2207 has been amended and

redesignated as § 54-2208, pursuant to S.L. 2006, ch. 116, § 5.

54-2208. Denial of application. — An application for licensure that has been denied by the board shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and be subject to the provisions of that chapter, as well as the administrative rules adopted by the board governing contested cases.

History. § 2, p. 666; am. and redesign. 2006, ch. 116, I.C., § 54-2207, as added by 2001, ch. 197, § 5, p. 315.

STATUTORY NOTES

Prior Laws.

Another former § 54-2208, which comprised 1963, ch. 127, § 8, p. 374; am. 1998, ch. 46, § 1, p. 193, was repealed by S.L. 2001, ch. 197, § 1.

Compiler's Notes.

Former § 54-2208 has been amended and redesignated as § 54-2209, pursuant to S.L. 2006, ch. 116, § 6.

Amendments.

The 2006 amendment, by ch. 116, renumbered this section from § 54-2207.

54-2209. Examinations. — (1) The board shall authorize examinations and permit any applicant whose application for licensure has been accepted by the board to take the board approved examinations. The board shall determine the passing score for examinations. Examinations shall test for entry-level competence and requisite knowledge and skills in the technical application of physical therapy services.

(2) An applicant who fails an examination may retake an examination one (1) additional time without reapplication for licensure, provided that the second examination occurs within six (6) months from the notification of the first failure.

(3) The board shall have the authority to prescribe additional course work or clinical work for any applicant who has failed an examination two (2) or more times. An applicant applying for licensure who has failed any board authorized examination two (2) or more times shall reapply and demonstrate to the board's satisfaction evidence of successful completion of additional clinical training or coursework as determined by the board.

History. § 2, p. 666; am. and redesign. 2006, ch. 116, I.C., § 54-2208, as added by 2001, ch. 197, § 6, p. 315.

STATUTORY NOTES

Prior Laws.

Another former § 54-2209, which comprised 1963, ch. 127, § 9, p. 374; am. 1979, ch. 185, § 7, p. 539, was repealed by S.L. 2001, ch. 197, § 1.

Compiler's Notes.

Former § 54-2209 has been amended and redesignated as § 54-2210, pursuant to S.L. 2006, ch. 116, § 7.

Amendments.

The 2006 amendment, by ch. 116, renumbered this section from § 54-2208.

54-2210. Qualifications for licensure. — To be eligible for licensure as a physical therapist or physical therapist assistant, a person must:

- (1) Be of good moral character; and
- (2) Submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a nationally accredited school, with a curriculum acceptable to the board, for physical therapists or physical therapist assistants, and have completed the application process; and
- (3) Have either passed to the satisfaction of the board, an examination authorized by the board to determine his or her fitness to practice as a physical therapist or physical therapist assistant, or be entitled to and apply for licensure by endorsement as provided for in section 54-2211, Idaho Code.

History.

I.C., § 54-2209, as added by 2001, ch. 197, § 2, p. 666; am. and redesign. 2006, ch. 116, § 7, p. 315.

STATUTORY NOTES

Prior Laws.

Another former § 54-2210, which comprised 1963, ch. 127, § 10, p. 374; am. 1979, ch. 185, § 8, p. 539, was repealed by S.L. 2001, ch. 197, § 1.

bered the section from § 54-2209 and substituted "section 54-2211" for "section 54-2210" near the end of subsection (3).

Compiler's Notes.

Former § 54-2210 has been amended and redesignated as § 54-2211, pursuant to S.L. 2006, ch. 116, § 8.

Amendments.

The 2006 amendment, by ch. 116, renun-

54-2211. Qualifications for licensure by endorsement. — A person who can show to the satisfaction of the board that he or she has met the qualifications set forth in section 54-2210(1) and (2), Idaho Code, and who, at the time of application, is a licensed or registered physical therapist or physical therapist assistant in good standing under the laws of another state or territory, and who can show to the satisfaction of the board that the person has passed a physical therapist or physical therapist assistant examination which is substantially similar to an examination authorized by the board, as determined by the board, shall be entitled to licensure without examination upon payment to the board of the licensure fee.

History.

I.C., § 54-2210, as added by 2001, ch. 197, § 2, p. 666; am. and redesign. 2006, ch. 116, § 8, p. 315.

STATUTORY NOTES

Prior Laws.

Another former § 54-2211, which comprised 1963, ch. 127, § 11, p. 374; am. 1971, ch. 90, § 2, p. 195, was repealed by S.L. 2001, ch. 197, § 1.

bered the section from § 54-2210 and substituted "section 54-2210(1)" for "section 54-2209(1)."

Compiler's Notes.

Former § 54-2211 has been amended and redesignated as § 54-2212, pursuant to S.L. 2006, ch. 116, § 9.

Amendments.

The 2006 amendment, by ch. 116, renun-

54-2212. Qualifications for licensure of foreign-educated physical therapists. — (1) An applicant for licensure as a physical therapist or

physical therapist assistant who has been educated outside of the United States shall:

- (a) Be of good moral character;
- (b) Submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a school for physical therapists or physical therapist assistants with a curriculum acceptable to the board;
- (c) Have his or her education credentials evaluated by a board approved credential evaluation agency and provide satisfactory evidence that his or her education is substantially equivalent to the requirements of physical therapists or physical therapist assistants educated in accredited educational programs as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require successful completion of additional coursework before proceeding with the application process;
- (d) Provide written proof that the school of physical therapy education is recognized by its own ministry of education and that such education would qualify the person for a license to practice physical therapy without limitation in that country;
- (e) If the applicant has actually practiced as a physical therapist or physical therapist assistant abroad, the applicant shall provide written proof of authorization to practice as a physical therapist without limitation in the country where the professional education occurred;
- (f) Provide proof of legal authorization to reside and seek employment in the United States or its territories;
- (g) Provide proof of passing scores on standardized English proficiency examinations as approved by the board if English is not the applicant's native language; and
- (h) Have successfully passed competency examinations authorized by the board.

(2) Notwithstanding the provisions of this section, if the foreign-educated physical therapist or physical therapist assistant applicant is a graduate of a professional physical therapy education program accredited by an agency approved by the board, requirements in subsections (1)(c) and (1)(d) of this section shall be waived.

History.

I.C., § 54-2211, as added by 2001, ch. 197, § 2, p. 666; am. and redesign. 2006, ch. 116,

§ 9, p. 315; am. 2009, ch. 95, § 2, p. 281; am. 2010, ch. 107, § 1, p. 218.

STATUTORY NOTES

Prior Laws.

Another former § 54-2212, which comprised 1963, ch. 127, § 12, p. 374; am. 1971, ch. 90, § 3, p. 195; am. 1979, ch. 185, § 9, p. 539, was repealed by S.L. 2001, ch. 197, § 1.

Amendments.

The 2006 amendment, by ch. 116, renumbered this section from § 54-2211.

The 2009 amendment, by ch. 95, added

“and that such education would qualify the person for a license to practice physical therapy without limitation in that country” at the end of subsection (1)(d).

The 2010 amendment, by ch. 107, added paragraph (1)(g), redesignated former paragraph (1)(g) as (1)(h), and therein substituted “passed competency examinations” for “passed an examination.”

Compiler's Notes.

Former § 54-2212 has been amended and

redesignated as § 54-2213, pursuant to S.L. 2006, ch. 116, § 10.

54-2213. Exemptions — Military, students, educators. — In addition to the exemptions provided in section 54-2204, Idaho Code, the following persons shall also be exempt from licensure under this chapter:

(1) A physical therapist while practicing in the United States armed services, United States public health service or veterans administration as based on requirements under federal regulations for state licensure of health care providers.

(2) A person who is pursuing a course of study leading to a degree as a physical therapist or physical therapist assistant in an accredited or board approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapy education.

(3) A physical therapist licensed and in good standing in another U.S. jurisdiction, or a foreign-educated physical therapist credentialed in another country, performing physical therapy as part of teaching or participating in an educational seminar of no more than sixty (60) days in a calendar year.

History.

I.C., § 54-2212, as added by 2001, ch. 197,

§ 2, p. 666; am. and redesign. 2006, ch. 116, § 10, p. 315.

STATUTORY NOTES**Prior Laws.**

Another former § 54-2213, which comprised 1963, ch. 127, § 13, p. 374; am. 1979, ch. 185, § 10, p. 539; am. 1987, ch. 46, § 2, p. 74, was repealed by S.L. 2001, ch. 197, § 1.

Compiler's Notes.

Former § 54-2213 has been amended and redesignated as § 54-2214, pursuant to S.L. 2006, ch. 116, § 11.

Amendments.

The 2006 amendment, by ch. 116, renumbered this section from § 54-2212.

54-2214. License renewal. — (1) A license shall be issued for a period of not less than one (1) year in conformance with administrative rules adopted by the board. The failure of any licensee to renew his or her license, as required herein and by the administrative rules of the board shall not deprive such person of the right to renewal, except as provided for in section 54-2215, Idaho Code.

(2) On and after July 1, 2007, each individual applicant for renewal of an active license shall, on or before the expiration of the license, submit satisfactory proof to the board of successful completion of not less than sixteen (16) hours of board-approved continuing education every year and as set forth in administrative rules adopted pursuant to this chapter. The board, in its discretion, may require such additional evidence as is necessary to verify compliance.

(3) Fees for licensure of physical therapists and physical therapist assistants shall be fixed by the board in its administrative rules. All fees shall be transmitted to the state treasurer for credit to the board's account.

(4) All licensed physical therapists or physical therapist assistants shall report to the board any name change or changes in business and home addresses prior to the expiration of thirty (30) days after the change becomes final.

History.

I.C., § 54-2213, as added by 2001, ch. 197,

§ 2, p. 666; am. 2005, ch. 184, § 1, p. 567; am. and redesign. 2006, ch. 116, § 11, p. 315.

STATUTORY NOTES

Cross References.

Deposit of funds in occupational licenses fund, § 54-2224.

State treasurer, § 67-1201 et seq.

Prior Laws.

Another former § 54-2214, which comprised 1963, ch. 127, § 14, p. 374; am. 1993, ch. 216, § 77, p. 587, was repealed by S.L. 2001, ch. 197, § 1.

Amendments.

The 2006 amendment, by ch. 116, renumbered the section from § 54-2213; in subsection

(1), deleted “nor more than five years” following “one (1) year” in the first sentence, deleted the former second sentence, which read: “Each license shall set forth its expiration date on the face of the certificate”, and substituted “54-2215” for “54-2214(2)” in the last sentence; and in subsection (2), substituted “sixteen (16) hours” for “thirty-two (32) hours” and “every year” for “two (2) years.”

Compiler's Notes.

Former § 54-2214 has been amended and redesignated as § 54-2215, pursuant to S.L. 2006, ch. 116, § 12.

54-2215. Renewal and reinstatement of license. — All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

History.

I.C., § 54-2214, as added by 2001, ch. 197,

§ 2, p. 666; am. 2005, ch. 184, § 2, p. 567; am. and redesign. 2006, ch. 116, § 12, p. 315.

STATUTORY NOTES

Prior Laws.

Another former § 54-2215, which comprised 1963, ch. 127, § 15, p. 374; am. 1974, ch. 13, § 157, p. 138; am. 1993, ch. 216, § 78, p. 587, was repealed by S.L. 2001, ch. 197, § 1.

Amendments.

The 2006 amendment, by ch. 116, renumbered the section from § 54-2214 and rewrote the section, which formerly read: “(1) Reinstatement of a lapsed license shall require the payment of a renewal fee, satisfactory proof of successful completion of the continuing education requirement set forth in section 54-2213(2), Idaho Code, and a reinstatement fee in accordance with the administrative rules adopted by the board, provided however, that

no reinstatement fee shall be greater in amount than fifty dollars (\$50.00).

“(2) Reinstatement of a license that has lapsed for a period of more than three (3) consecutive years shall require reapplying for a license and payment of fees in accordance with the administrative rules adopted by the board. The individual shall successfully demonstrate to the board competency in the practice of physical therapy. The board may also require the applicant to take an examination, remedial courses, or both, as shall be determined by the board.”

Compiler's Notes.

Former § 54-2215 has been amended and redesignated as § 54-2216, pursuant to S.L. 2006, ch. 116, § 13.

54-2216. Lawful practice of physical therapy. — (1) A physical therapist or physical therapist assistant duly licensed in accordance with

this chapter is authorized to practice physical therapy as defined in this chapter.

(2) A physical therapist shall refer persons under his or her care to appropriate health care practitioners including, but not limited to, licensed medical physicians, osteopathic physicians, podiatrists, dentists or chiropractic physicians, if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice of physical therapy or when the physical therapist has reasonable cause to believe that physical therapy is contraindicated.

(3) Physical therapists and physical therapist assistants shall adhere to the standards of ethics of the physical therapy profession as set forth in the administrative rules adopted by the board.

History.

I.C., § 54-2215, as added by 2001, ch. 197,

§ 2, p. 666; am. and redesign. 2006, ch. 116,

§ 13, p. 315.

STATUTORY NOTES

Prior Laws.

Another former § 54-2216, which comprised 1963, ch. 127, § 16, p. 374, was repealed by S.L. 1993, ch. 216, § 79, effective July 1, 1993.

Compiler's Notes.

Former § 54-2216 has been amended and redesignated as § 54-2217, pursuant to S.L. 2006, ch. 116, § 14.

Amendments.

The 2006 amendment, by ch. 116, renumbered this section from § 54-2215.

54-2217. Use of titles and restrictions. — (1) A physical therapist may use the letters "PT" in connection with his or her name or place of business to denote licensure under this chapter.

(2) It is unlawful for any person, or for any business entity, its employees, agents or representatives to use in connection with his or her name, or the name of activity of the business, the words "physical therapy," "physical therapist," "physiotherapist," "registered physical therapist," or "licensed physical therapist," or the letters "PT," "LPT," "RPT," or any other words, abbreviations or insignia indicating or implying directly or indirectly that such person, business entity, its employees, agents or representatives are engaged in the practice of physical therapy, unless such services are provided by or under the direction of a physical therapist licensed in accordance with this chapter.

(3) A physical therapist assistant shall use the letters "PTA" in connection with his or her name to denote licensure under this chapter.

(4) It is unlawful for any person to use the title "physical therapist assistant," "licensed physical therapist assistant," or "registered physical therapist assistant," or the letters "PTA," "RPTA," or "LPTA," or any other words, abbreviations or insignia in connection with his or her name to indicate or imply, directly or indirectly, that he or she is a physical therapist assistant without being licensed in accordance with this chapter as a physical therapist assistant.

History. § 2, p. 666; am. and redesign. 2006, ch. 116,
I.C., § 54-2216, as added by 2001, ch. 197, § 14, p. 315.

STATUTORY NOTES

Prior Laws. Another former § 54-2217, which com- prised 1963, ch. 127, § 17, p. 374, was re- pealed by S.L. 2001, ch. 197, § 1.	Compiler's Notes. Former § 54-2217 has been amended and redesignated as § 54-2218, pursuant to S.L. 2006, ch. 116, § 15.
Amendments. The 2006 amendment, by ch. 116, renum- bered this section from § 54-2216.	

**54-2218. Supervision of physical therapist assistants and sup-
portive personnel.** — (1) A licensed physical therapist shall supervise
and be responsible for patient care given by physical therapist assistants
and supportive personnel. A physical therapist who delegates tasks or
procedures that fall within the scope of the practice of physical therapy shall
supervise such tasks and procedures in conformance with administrative
rules adopted by the board.

(2) A physical therapist shall adhere to the policies and procedures that
delineate the functions, responsibilities and supervisory relationships of
physical therapist assistants and supportive personnel as established by the
board, on the advice and counsel of the committee, in the board's adminis-
trative rules.

History. § 2, p. 666; am. and redesign. 2006, ch. 116,
I.C., § 54-2217, as added by 2001, ch. 197, § 15, p. 315.

STATUTORY NOTES

Prior Laws. Another former § 54-2218, which com- prised I.C., § 54-2218, as added by 1988, ch. 188, § 1, p. 335, was repealed by S.L. 2001, ch. 197, § 1.	Compiler's Notes. Former § 54-2218 has been amended and redesignated as § 54-2219, pursuant to S.L. 2006, ch. 116, § 16.
Amendments. The 2006 amendment, by ch. 116, renum- bered this section from § 54-2217.	

54-2219. Grounds for disciplinary action. — The following conduct,
acts, or conditions shall constitute grounds for disciplinary action:

(1) Violating any provision of this chapter or any administrative rule
adopted by the board;

(2) Practicing or offering to practice beyond the scope of physical therapy
practice as defined in this chapter or failing to meet the standard of physical
therapy provided by other qualified physical therapists and physical ther-
apist assistants in the same or similar communities;

(3) Obtaining or attempting to obtain a license by fraud, misrepresenta-
tion or omission;

(4) Engaging in the performance of substandard care by a physical
therapist due to an intentional, negligent, or reckless act or failure to act;

(5) Engaging in the performance of substandard care by a physical

therapist assistant, due to an intentional, negligent, or reckless act or failure to act, or performing tasks not selected or delegated by the supervising licensed physical therapist;

(6) Inadequate supervising by a physical therapist of a physical therapist assistant and/or supportive personnel, or inadequate supervising by a physical therapist assistant of supportive personnel in accordance with this chapter and the administrative rules adopted by the board;

(7) Having been convicted of a felony or being convicted of any crime that has a bearing on any practice pursuant to this chapter in the courts of this state or any other state, territory or country. Conviction, as used in this subsection (7), shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere or its equivalent. The record of conviction, or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction occurred, shall be conclusive evidence of such conviction;

(8) Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other drugs, chemicals or alcohol;

(9) Having had a license revoked or suspended, other disciplinary action taken or an application for licensure refused, revoked or suspended by the proper authorities of another state, territory or country, or omitting such information from any application to the board, or failure to divulge such information when requested by the board;

(10) Committing any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of physical therapy as a physical therapist or physical therapist assistant, provided:

(a) Consent of the patient shall not be a defense;

(b) This subsection (10) shall not apply to sexual contact between a physical therapist or physical therapist assistant and the physical therapist's or physical therapist assistant's spouse or a person in a domestic relationship who is also a patient;

(c) A former patient means a patient for whom the physical therapist or physical therapist assistant has provided physical therapy services within the last twelve (12) months; and

(d) Sexual or romantic relationships with former patients beyond the period of time set forth herein may also be a violation if the physical therapist or physical therapist assistant uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient;

(11) Directly or indirectly requesting, receiving or participating in the dividing, transferring or assigning, of any referral fee from any health care professional licensed or regulated by the state of Idaho, or any other third party, or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. Nothing in this paragraph prohibits the members, owners, shareholders or partners of any regularly and properly organized business entity recognized by the laws of the state of

Idaho and comprised of physical therapists from dividing fees received for professional services amongst themselves;

(12) Failing to adhere to the recognized standards of ethics of the physical therapy profession as published in the administrative rules adopted by the board;

(13) Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession, or in the application process;

(14) Having been adjudged mentally incompetent by a court of competent jurisdiction;

(15) Aiding or abetting a person not licensed in this state who directly or indirectly performs activities requiring a license;

(16) Failing to report to the board any act or omission of a licensee, applicant, or any other person, which violates any provision of this chapter;

(17) Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action;

(18) Failing to maintain patient confidentiality unless otherwise required by law;

(19) Failing to maintain adequate records. For purposes of this subsection (19), "adequate patient records" means legible records that contain, at a minimum, an evaluation of objective findings, the plan of care, and the treatment record;

(20) Promoting unnecessary devices, treatment, intervention or service for the financial gain of the practitioner or of a third party;

(21) Providing treatment intervention unwarranted by the condition of the patient;

(22) Failing to pay a valid judgment that arose out of any practice pursuant to this chapter within two (2) months of the date that the judgment became final;

(23) Failing to meet continuing education requirements as established by the board.

History.

I.C., § 54-2218, as added by 2001, ch. 197, § 2, p. 666; am. and redesign. 2006, ch. 116, § 16, p. 315.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 116, renumbered the section from § 54-2218; substituted "failing" for "which fails" in subsection (2); substituted "supervising" for "supervision" twice in subsection (6); rewrote subsection (7), which formerly read: "Having been convicted of a crime involving moral turpitude in the courts of this state or any other state, territory or country. Conviction, as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere or its equivalent"; in the introduc-

tory language of subsection (10), substituted "Committing" for "Commission of" at the beginning and inserted "provided" at the end; substituted "subsection (10)" for "section" near the beginning of subsection (10)(b); substituted "means" for "includes" in subsection (10)(c); substituted "subsection (19)" for "paragraph" in subsection (19); and added subsections (22) and (23).

Compiler's Notes.

Former section 54-2219 has been amended and redesignated as § 54-2220, pursuant to S.L. 2006, ch. 116, § 17.

54-2220. Discipline actions and procedures. — (1) The board shall regulate the practice of physical therapy in the state of Idaho. The board is authorized to institute any investigation, hearing or other legal proceeding necessary to effect compliance with this chapter.

(2) The board or its hearing officer, upon a finding that action is necessary, shall have the power pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner provided by the administrative rules adopted by the board, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where such witness resides or may be found which shall be served and returned. The board may require a licensee to be examined to determine his or her mental or physical competence when the board has probable cause to believe the licensee is suffering from an impairment that might impede his or her ability to practice competently.

(3) When it is brought to the attention of the board by the written statement of any person that a person licensed under this chapter has done any act or thing in violation of any provision of this chapter, the board shall immediately make an investigation of such person, and if the board finds that there is probable cause to institute proceedings against such person, it shall without unnecessary delay transmit to that person by mail, a copy of the charges and shall fix a day for a hearing upon the matter, said hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code, and with the administrative rules adopted by the board.

(4) The board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of physical therapy. If an investigation indicates that a person may be practicing physical therapy unlawfully, the board shall inform the person of the alleged violation. The board may refer the matter for prosecution whether or not the person ceases the unlawful practice of physical therapy.

(5) The board may, in the name of the people of the state of Idaho, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this chapter. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this chapter.

History.

I.C., § 54-2219, as added by 2001, ch. 197,

§ 2, p. 666; am. 2005, ch. 185, § 3, p. 567; am. and redesisg. 2006, ch. 116, § 17, p. 315.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 116, renumbered the section from § 54-2219; deleted the former second sentence of subsection (1), which read: "The licensure board shall serve as an advisor to the board as prescribed in

section 54-2205, Idaho Code"; deleted "or licensure board" following "the board" twice in subsection (3) and once in subsection (4); and deleted "not less than fourteen (14), nor more than ninety (90) days after said mailing" following "fix a day" in subsection (3).

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 116, renumbered this section from § 54-2221.

redesignated as § 54-2223, pursuant to S.L. 2006, ch. 116, § 20.

Compiler's Notes.

Former § 54-2222 has been amended and

54-2223. Unlawful practice — Fines and penalties. — (1) It shall be unlawful for any person to practice or offer to practice physical therapy in this state, or to use in connection with his or her name or otherwise assume, use or advertise any title or description tending to convey the impression that he or she is a physical therapist or a physical therapist assistant, unless such person has been licensed under the provisions of this chapter.

(2) It shall be unlawful for any person to aid, abet, or require another person, licensed or unlicensed, to directly or indirectly violate or evade any provision of this chapter, or to combine or conspire with another person, or permit one's license to be used by another person, or act as an agent, partner, associate, or otherwise, of another person with the intent to violate or evade the provisions of this chapter.

(3) A violation of the provisions of this chapter shall constitute a misdemeanor, and any person convicted thereof shall be fined an amount not to exceed one thousand dollars (\$1,000). A second conviction for a violation of any provision of this chapter shall also constitute a misdemeanor, and a person convicted of a second violation of this chapter shall be imprisoned in a county jail for a period not to exceed six (6) months, or shall be fined an amount not to exceed five thousand dollars (\$5,000), or shall be punished by both such fine and imprisonment. Any third or more conviction for a violation of any provision of this chapter shall constitute a felony, and a person convicted of a third or more violation of this chapter shall be imprisoned in the state prison for a period not to exceed three (3) years, or shall be fined an amount not to exceed ten thousand dollars (\$10,000), or shall be punished by both such fine and imprisonment.

History.

I.C., § 54-2222, as added by 2001, ch. 197,

§ 2, p. 666; am. and redesign. 2006, ch. 116, § 20, p. 315.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 116, renumbered this section from § 54-2222.

54-2224. Disposition of receipts — Expenses. — All moneys received pursuant to the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational licenses fund [account]. All expenses incurred pursuant to the provisions of this chapter shall be paid from the occupational licenses fund [account].

History.

I.C., § 54-2224, as added by 2006, ch. 116,
§ 21, p. 315.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions were added by the

compiler to correct the name of the referenced
account. See § 67-2605.

CHAPTER 23

PSYCHOLOGISTS

SECTION.

- 54-2301. Practice of psychology — Regula-
tion — Objects and purposes.
- 54-2302. Definitions.
- 54-2303. License required — Exemptions.
- 54-2304. Establishment of board of psycholo-
gist examiners.
- 54-2305. Board of psychologist examiners —
Powers.
- 54-2306. Exemption of social psychologists.
[Repealed.]
- 54-2307. Qualifications for license — Appli-
cants for whom an examina-
tion may be required.
- 54-2308. Qualifications for license — Appli-
cants for whom examination
shall not be required. [Re-
pealed.]

SECTION.

- 54-2309. Nonissuance and revocation of li-
cense.
- 54-2310. Violation and penalty.
- 54-2311. Duty of prosecuting attorneys.
- 54-2312. Qualifications for license — En-
dorsement.
- 54-2312A. Senior psychologist.
- 54-2313. Unauthorized practice of medicine.
- 54-2314. Privileged communication — Confi-
dential relations and commu-
nications between psycholo-
gist and client.
- 54-2315. Administration by bureau of occu-
pational licenses — Fee for
renewal of license — Renewal
and reinstatement.

54-2301. Practice of psychology — Regulation — Objects and purposes. — The practice of psychology in the state of Idaho is hereby declared to affect the public health, safety and welfare, and to be subject to regulation and control in the public interest to protect the public from unprofessional, improper, unauthorized and unqualified practice of psychology, and from unprofessional conduct by persons licensed to practice psychology. This act should be liberally construed to carry out these objects and purposes.

History.

1963, ch. 186, § 1, p. 549.

STATUTORY NOTES

Cross References.

Incorporation of professional service corpo-
rations, § 30-1301 et seq.

186 compiled as §§ 54-2301 to 54-2305, 54-
2307, 54-2309 to 54-2312, and 54-2213 to
54-2215.

Compiler's Notes.

The words "this act" refer to S.L. 1963, ch.

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Physicians and Surgeons, §§ 28, 132.

A.L.R. — Liability of doctor, psychiatrist or

psychologist for failure to take steps to prevent patient's suicide. 17 A.L.R.4th 1128.

54-2302. Definitions. — Within the meaning of this chapter the following definitions apply:

(1) "Department" means the department of self-governing agencies of the state of Idaho.

(2) "Bureau chief" means the chief of the bureau of occupational licenses of the state of Idaho.

(3) "Board" means the Idaho state board of psychologist examiners.

(4) "Person," "he" and "his" mean either male or female persons unless a contrary intention is made manifest. None of these words shall be taken to mean other than a natural person.

(5) "Psychological services" means any services to which the words "psychological," "psychologist" or "psychology" are applied by the person rendering or offering to render them or to the "practice of psychology" as defined in subsection (6) of this section.

(6) "Practice of psychology" means the application of established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment. The application of said principles includes, but is not restricted to, counseling and the use of psychotherapeutic measures with persons or groups to eliminate symptomatic, maladaptive or undesired behavior so as to enhance interpersonal relationships in the areas of work, family, school, and personal relationships; measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes, and skills; diagnosing and treating mental and emotional disorders or disabilities; and doing research on problems relating to human behavior.

(7) A person represents himself to be a psychologist when he holds himself out to the public by any title or description incorporating the words "psychological," "psychologist" or "psychology" or offers to render or renders psychological services for remuneration.

(8) "Temporary permit" means a document issued by the board to a psychologist licensed in another state authorizing the individual to practice psychology in Idaho for a limited period as set forth in this chapter and rules of the board.

History.

1963, ch. 186, § 2, p. 549; am. 1974, ch. 13,

§ 158, p. 138; am. 1987, ch. 147, § 1, p. 292; am. 2009, ch. 33, § 1, p. 90.

STATUTORY NOTES

Cross References.

Chief of bureau of occupational licenses, § 67-2603.

Department of self-governing agencies, § 67-2601 et seq.

Amendments.

The 2009 amendment, by ch. 33, in the introductory language, substituted "chapter" for "act" and "apply" for "obtain"; redesignated subsections (a) through (g) as subsections (1)

through (7), respectively; and added subsection (8).

JUDICIAL DECISIONS

Testimony Regarding Mental Conditions.

One who is entitled to diagnose, treat, and correct mental conditions is also competent to testify regarding the causes of such condi-

tions; therefore, a psychologist may testify in an industrial commission proceeding on the issue of causation. *O'Loughlin v. Circle A Constr.*, 112 Idaho 1048, 739 P.2d 347 (1987).

54-2303. License required — Exemptions. — (1) It shall be unlawful for any person to practice or to offer to practice psychology, or to represent himself to be a psychologist, unless he shall first obtain a license pursuant to this chapter, except as hereinafter provided.

(2) Nothing in this chapter shall be construed to limit the activities, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency, or other political subdivision, insofar as such activities or services are a part of the duties in his salaried position, and insofar as such activities or services are performed solely on behalf of his employer.

(3) Nothing in this chapter shall be construed to limit the activities and services of a student, intern, or resident in psychology, pursuing a course of study approved by the board as qualifying training and experience for psychologists, provided that such activities and services constitute a part of his supervised course of study, and he is designated by such titles as "psychology intern," "psychology trainee," or other title clearly indicating such training status. Nothing in this chapter shall be construed to limit the activities of a person employed by a duly chartered educational institution solely as an administrator, teacher, or researcher or combination thereof in the discharge of those duties.

(4) Nothing in this chapter shall be construed to prevent unlicensed persons from providing certain services under the direct supervision and control of licensed psychologists, under such rules as may be established by the board.

(5) Nothing in this chapter shall be construed to prevent qualified members of other professions licensed or registered by the state of Idaho from doing work of a psychological nature consistent with their training and consistent with the code of ethics of their respective professions.

History.

1963, ch. 186, § 3, p. 549; am. 1984, ch. 141,

§ 1, p. 330; am. 2004, ch. 323, § 1, p. 906; am. 2009, ch. 33, § 2, p. 90.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 33, designated the introductory paragraph as subsection (1), and therein substituted "chapter" for "act"; redesignated subsections (a) through (d) as

subsections (2) through (5), respectively; and in subsection (5), substituted "professions licensed or registered by the state of Idaho" for "professions such as physicians, licensed counselors, or social workers."

54-2304. Establishment of board of psychologist examiners. — There is hereby created in the department of self-governing agencies, an Idaho state board of psychologist examiners as follows:

(1) Said board shall consist of four (4) licensed psychologist members and one (1) public member who is not a practitioner or spouse of a practitioner in any health care field and who is not a convicted felon and who has not been an applicant for licensure as a psychologist, who are citizens of the United States, residents of the state of Idaho, and appointed by the governor for four (4) year terms. The psychologist members' terms shall be staggered such that only one (1) term expires June 30 of each year.

(2) Each psychologist board member shall be licensed under this chapter.

(3) When the term of each psychologist member of the board ends, the governor shall appoint his successor for a term of four (4) years from a list of eligible candidates for board membership submitted to the governor by the president of the Idaho psychological association. Any vacancy occurring on the board shall be filled by the governor, from a list of all eligible candidates for board membership, by appointment for the unexpired term. The governor may give consideration to recommendations from any source in making appointments of the public member to a full or unexpired term. The governor may remove any board member for misconduct, incompetency, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon.

(4) At all times, the board shall have at least one (1) member who is engaged primarily in rendering services in psychology and at least one (1) member who is engaged primarily in teaching, training, or research in psychology.

(5) No board member shall serve more than two (2) consecutive terms.

(6) Each board member shall be compensated as provided by section 59-509(n), Idaho Code.

(7) The board shall annually in the month of July, hold a meeting, and elect a chairman and vice chairman. The board shall meet at such other times as deemed necessary and advisable by the chairman, or by a majority of its members, or by the governor. Reasonable notice of all meetings shall be given as required by law. A majority of the board shall constitute a quorum at any meeting or hearing.

History.

1963, ch. 186, § 4, p. 549; am. 1965, ch. 201, § 7, p. 446; am. 1969, ch. 464, § 17, p. 1304; am. 1974, ch. 13, § 159, p. 138; am. 1980, ch.

247, § 69, p. 582; am. 1982, ch. 145, § 1, p. 406; am. 1990, ch. 68, § 1, p. 150; am. 1996, ch. 66, § 6, p. 198; am. 1999, ch. 150, § 1, p. 421; am. 2009, ch. 33, § 3, p. 90.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

Amendments.

The 2009 amendment, by ch. 33, redesignated subsections (a) through (g) as subsections (1) through (7), respectively; in subsection (2), substituted "chapter" for "act"; and in subsection (7), substituted "shall be given as required by law" for "shall be given in a manner prescribed by the board."

tion (2), substituted "chapter" for "act"; and in subsection (7), substituted "shall be given as required by law" for "shall be given in a manner prescribed by the board."

Compiler's Notes.

For more on the Idaho psychological association, see <http://www.idahopsych.org>.

54-2305. Board of psychologist examiners — Powers. — The board of psychologist examiners shall have the following powers:

(1) To pass upon the qualifications and fitness of applicants for licenses and reciprocal licenses; and, at its option to adopt and revise rules requiring applicants to pass examinations relating to their qualifications as a prerequisite to the issuance of licenses.

(2) To adopt, and, from time to time, revise such rules in accordance with the provisions of chapter 52, title 67, Idaho Code, and not inconsistent with the law as may be necessary to carry into effect the provisions of this chapter. Such rules shall include, but need not be limited to, a code of ethics for psychologists in the state consistent with the current, and as future amended, ethical standards for psychologists of the American psychological association and the educational and professional qualifications of applicants for licensing under this chapter.

(3) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of psychologists and psychologist applicants pursuant to this chapter, and to conduct hearings in connection therewith.

(4) To conduct hearings upon complaints concerning violations of the provisions of, and the rules adopted pursuant to, this chapter and cause the prosecution and enjoinder of all such violations.

(5) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records, and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in district courts in criminal cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated. It shall be the duty of any district court in this state, on application by the board, to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of the subpoena issued from such court for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

(6) Proceedings before the board and judicial review of the action of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(7) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

(8) To adopt a rule requiring continuing education as a condition of continued licensure.

(9) To adopt rules allowing for a temporary permit to individuals licensed as psychologists in another state authorizing such individuals to practice psychology in Idaho for a period not to exceed thirty (30) days pursuant to such terms and requirements as set forth in the rules.

(10) To establish by rule an inactive license status.

History.

1963, ch. 186, § 5, p. 549; am. 1974, ch. 13, § 160, p. 138; am. 1984, ch. 141, § 2, p. 330;

am. 1987, ch. 147, § 2, p. 292; am. 1993, ch. 216, § 80, p. 587; am. 2009, ch. 33, § 4, p. 90.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

(h) as subsections (1) through (8), respectively; and added subsections (9) and (10).

Amendments.

The 2009 amendment, by ch. 33, throughout the section, substituted “chapter” for “act”; redesignated subsections (a) through

Compiler's Notes.

For ethical standards of American psychological association, see <http://www.apa.org/ethics/code/index.aspx>.

JUDICIAL DECISIONS**Sanctions for Violation of Board Order.**

Under this section and Idaho Admin. Code R. 24.12.01.375, the board of psychological examiners could not authorize additional disciplinary action for violating an order issued

by the board. *Wright v. Bd. of Psychological Exam'rs (In re Bd. of Psychologist Examiners' Final Order)*, 148 Idaho 542, 224 P.3d 1131 (2010).

54-2306. Exemption of social psychologists. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1963, ch.

186, § 6, p. 549, was repealed by S.L. 2009, ch. 33, § 5.

54-2307. Qualifications for license — Applicants for whom an examination may be required. — An applicant shall be qualified for a license to practice psychology provided proof satisfactory to the board has been received showing:

- (1) Acceptable moral character; and
- (2) Either one of the following:
 - (a) Graduation from an accredited college or university with a doctoral degree in psychology and two (2) years of supervised experience acceptable to the board, one (1) year of which may include a predoctoral practicum or internship and one (1) of which must be postdoctoral; or
 - (b) Graduation from an accredited college or university with a doctoral degree in a field related to psychology, provided experience and training are acceptable to the board; and
- (3) Successful passage of an examination if such examination is required by the rules duly adopted by the board; and
- (4) Receipt of a completed application accompanied by an application fee as established by board rules not to exceed three hundred dollars (\$300), and when an examination is required a processing fee of twenty-five dollars (\$25.00) payable to the bureau of occupational licenses. The fee for any required examination or reexamination shall be submitted directly to the national examining entity. The application fee and the processing fee are not refundable.

History.

1963, ch. 186, § 7, p. 549; am. 1969, ch. 464,

§ 18, p. 1304; am. 1975, ch. 27, § 1, p. 42; am. 1982, ch. 145, § 2, p. 406; am. 1994, ch. 16,

§ 1, p. 31; am. 2003, ch. 120, § 1, p. 368; am. 2009, ch. 33, § 6, p. 90.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2009 amendment, by ch. 33, redesignated subsection (a) as subsection (1), and made related redesignations; in the introductory language in subsection (2), added “one of the following”; in subsection (2)(a), substituted “doctoral degree” for “degree of doctor of philosophy” and “supervised experience” for

“postgraduate experience,” deleted “such two (2) years not to include terms of internship” following “acceptable to the board,” and added “one (1) year of which may include a predoctoral practicum or internship and one (1) of which must be postdoctoral”; in subsection (2)(b), substituted “accredited college” for “recognized college”; and in subsection (4), substituted “three hundred dollars (\$300)” for “two hundred dollars (\$200).”

JUDICIAL DECISIONS

Cited in: O’Loughlin v. Circle A Constr., 112 Idaho 1048, 739 P.2d 347 (1987).

54-2308. Qualifications for license — Applicants for whom examination shall not be required. [Repealed.]

STATUTORY NOTES

Compiler’s Notes.

This section, which comprised I.C., § 54-2308, as added by 1963, ch. 186, § 8, p. 549,

was repealed by S.L. 1999, ch. 150, § 2, effective July 1, 1999.

54-2309. Nonissuance and revocation of license. — No license may be issued, and a license previously issued may be revoked, suspended, restricted or otherwise disciplined if the person applying, or the person licensed be:

- (1) Found guilty by a court of competent jurisdiction of a felony;
- (2) Found by the board to be a repeated and excessive abuser of a controlled substance;
- (3) Found by the board to be a repeated and excessive abuser of alcohol;
- (4) Found by the board to be in violation of any provision of this chapter or any of the rules adopted pursuant to this chapter; or
- (5) Found by the board to have been unethical as detailed by the current, and future amended, ethical standards of the American psychological association.

History.

1963, ch. 186, § 9, p. 549; am. 1974, ch. 13, § 161, p. 138; am. 1984, ch. 141, § 3, p. 330;

am. 2004, ch. 109, § 1, p. 383; am. 2009, ch. 33, § 7, p. 90.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 33, in the introductory language, inserted “restricted or

otherwise disciplined”; and redesignated subsections (a) through (e) as subsections (1) through (5).

Compiler's Notes.

For ethical standards of American psycho-

logical association, see <http://www.apa.org/ethics/code/index.aspx>.

54-2310. Violation and penalty. — Any person who shall practice or attempt to offer to practice psychology, as defined in this act, without having at the time of so doing a valid, unexpired, unrevoked, and unsuspended license issued under this act shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than six (6) months or both for each violation.

History.

1963, ch. 186, § 10, p. 549; am. 1984, ch. 141, § 4, p. 330.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch. 186 compiled as §§ 54-2301 to 54-2305, 54-

2307, 54-2309 to 54-2312, and 54-2213 to 54-2215.

54-2311. Duty of prosecuting attorneys. — It shall be the duty of the several prosecuting attorneys to prosecute all violations of this act in their respective counties.

History.

1963, ch. 186, § 11, p. 549.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch. 186 compiled as §§ 54-2301 to 54-2305, 54-

2307, 54-2309 to 54-2312, and 54-2213 to 54-2215.

54-2312. Qualifications for license — Endorsement. — The board may recommend the granting of a license to any person who is licensed or certified by a regulatory board of psychologists in the United States or Canada where such certification or licensure was based on a doctoral degree and who:

(1) Submits a complete application, including the application fee and a license fee not to exceed three hundred dollars (\$300) as established by board rule;

(2) Is of good moral character;

(3) Has not had a certification or license revoked, suspended or otherwise sanctioned; and

(4) Has certified under oath that they have reviewed and will abide by the laws and rules governing the practice of psychology in Idaho and the code of ethics of the American psychological association and either:

(a) Holds a current certificate of professional qualification in psychology or holds a certificate of professional standing issued by a national credentialing entity approved by the board by rule; or

(b) Meets the requirements of section 54-2307(2), Idaho Code, and board

rules relating to endorsement and educational and credentialing requirements for licensure.

History.

1963, ch. 186, § 12, p. 549; am. 1969, ch. 464, § 19, p. 1304; am. 1976, ch. 166, § 19, p.

596; am. 2001, ch. 81, § 1, p. 203; am. 2009, ch. 33, § 8, p. 90.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 33, in subsection (1), substituted “three hundred dollars (\$300)” for “two hundred dollars (\$200)”; and, in subsection (4)(a), added “or holds a certificate of professional standing issued by a national credentialing entity approved by the board by rule.”

Compiler’s Notes.

For ethical standards of American psychological association, see <http://www.apa.org/ethics/code/index.aspx>.

54-2312A. Senior psychologist. — The board may grant a license to any person who submits a completed application, including the application fee and a license fee not to exceed three hundred dollars (\$300) as established by board rule, and who:

- (1) Is of good moral character;
- (2) Has maintained a valid psychology license based on a doctoral degree in the United States or Canada for a period of not less than twenty (20) years;
- (3) Has a documented record of psychology practice for five (5) of the last seven (7) years immediately prior to the date of application;
- (4) Has a documented record of meeting the continuing education requirement of the jurisdiction where they practiced for not less than five (5) calendar years immediately prior to the date of application;
- (5) Has not been the subject of any disciplinary action within the last seven (7) years prior to application or has never voluntarily surrendered a license to practice psychology in any jurisdiction; and
- (6) Has certified under oath that he has reviewed and will abide by the laws and rules governing the practice of psychology in Idaho and the code of ethics of the American psychological association.

History.

I.C., § 54-2312A, as added by 2001, ch. 81, § 2, p. 203; am. 2009, ch. 33, § 9, p. 90.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 33, in the introductory language, substituted “three hundred dollars (\$300)” for “two hundred dollars (\$200)”; and, in subsection (4), substituted “Has a documented record of meeting the continuing education requirement of the jurisdiction where they practiced” for “Has

met the continuing education requirements of the board.”

Compiler’s Notes.

For ethical standards of American psychological association, see <http://www.apa.org/ethics/code/index.aspx>.

54-2313. Unauthorized practice of medicine. — Nothing herein

shall be construed as authorizing any person licensed as a psychologist to engage in any manner in the practice of medicine as defined in the laws of this state. A psychologist who engages in psychotherapy shall make provision for the diagnosis and treatment of medical conditions in collaboration with a physician licensed pursuant to title 54, chapter 18, Idaho Code. A psychologist shall not diagnose, prescribe for or treat a client with reference to a medical condition.

History.

1963, ch. 186, § 13, p. 549; am. 1987, ch. 147, § 4, p. 292.

54-2314. Privileged communication — Confidential relations and communications between psychologist and client. — A person licensed as a psychologist under the provisions of this act cannot, without the written consent of his client, be examined in a civil or criminal action as to any information acquired in the course of his professional services in behalf of the client. The confidential relations and communications between a psychologist and his client are on the same basis as those provided by law between an attorney and client, and nothing in this article shall be construed to require any such privileged communication to be disclosed.

History.

1963, ch. 186, § 14, p. 549.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" in the first sentence refer to S.L. 1963, ch. 186 compiled as §§ 54-2301 to 54-2305, 54-2307, 54-2309 to 54-2312, and 54-2213 to 54-2215.

Section 15 of S.L. 1963, ch. 186, read: "If

any section of this act, or any part thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any section or part thereof."

JUDICIAL DECISIONS**Court Ordered Reports.**

This section does not apply to psychological reports to a court in the course of juvenile proceedings; such reports become part of the court records and are no longer correctly

characterized as information acquired in the course of the psychologist's professional services on behalf of the client. *State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992).

RESEARCH REFERENCES

A.L.R. — Privilege, in judicial or quasi-judicial proceedings, arising from relation-

ship between psychiatrist or psychologist and patient. 44 A.L.R.3d 24.

54-2315. Administration by bureau of occupational licenses — Fee for renewal of license — Renewal and reinstatement. — This chapter shall be administered by the bureau of occupational licenses. The fee for renewal of license shall be a fee as established by board rule not to exceed four hundred dollars (\$400) per annum. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire

unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

History.

1963, ch. 186, § 16, p. 549; am. 1965, ch. 164, § 9, p. 317; am. 1969, ch. 464, § 20, p. 1304; am. 1974, ch. 13, § 162, p. 138; am. 1976, ch. 166, § 20, p. 596; am. 1982, ch. 145,

§ 3, p. 406; am. 1987, ch. 147, § 3, p. 292; am. 1999, ch. 150, § 3, p. 421; am. 2003, ch. 21, § 11, p. 77; am. 2006, ch. 52, § 1, p. 163; am. 2009, ch. 33, § 10, p. 90.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

tuted “four hundred dollars (\$400)” for “three hundred dollars (\$300)” in the first sentence.

Amendments.

The 2006 amendment, by ch. 52, substituted “three hundred dollars (\$300)” for “two hundred twenty-five dollars (\$225).”

The 2009 amendment, by ch. 33, substi-

Effective Dates.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

CHAPTER 24

DRINKING WATER AND WASTEWATER PROFESSIONALS LICENSING ACT

SECTION.

54-2401. Short title — Declaration of policy.

54-2402. License required.

54-2403. Definitions.

54-2404. State board established — Manner of appointment — Qualifications — Terms of office — Removal from office.

54-2405. State board procedures — Payment of expenses of board members.

54-2406. Powers and duties of board.

54-2407. Fees — Payment of costs and expenses.

54-2408. Licenses — Records.

SECTION.

54-2409. Application form — License categories — Qualifications for registration and license.

54-2410. Endorsement — Licenses from other states.

54-2411. Annual renewal of license.

54-2412. Revocation or suspension of license — Powers of board — Procedures for disciplinary proceedings.

54-2413. Violations and penalties.

54-2414. Duty of prosecuting attorney — Duty of attorney general.

54-2401. Short title — Declaration of policy. — (1) This chapter shall be known and cited as the “Drinking Water and Wastewater Professionals Licensing Act.”

(2) In order to protect the public health, safety and welfare, and safeguard the water and land resources of Idaho, the practice of drinking water operators, wastewater operators, and backflow assembly testers in this state is hereby declared to be subject to regulation in the public interest.

History.

I.C., § 54-2401, as added by 2004, ch. 335, § 1, p. 995.

STATUTORY NOTES

Prior Laws.

The following former sections were re-

pealed by S.L. 2002, ch. 111, § 1, effective March 19, 2002.

54-2401 which comprised 1963, ch. 280, § 1, p. 715; am. 1972, ch. 229, § 1, p. 597; am. 1974, ch. 13, § 163, p. 138.

54-2402 which comprised 1963, ch. 280, § 2, p. 715; am. 1965, ch. 164, § 10, p. 317; am. 1969, ch. 464, § 21, p. 1304; am. 1972, ch. 229, § 2, p. 597; am. 1974, ch. 13, § 164, p. 138; am. 1976, ch. 166, § 21, p. 596; am. 1983, ch. 125, § 1, p. 320; am. 1995, ch. 11, § 1, p. 17.

54-2403 which comprised 1963, ch. 280, § 3, p. 715; am. 1972, ch. 229, § 3, p. 597; am. 1974, ch. 13, § 165, p. 138; am. 1995, ch. 11, § 2, p. 17.

54-2404 which comprised 1963, ch. 280, § 4, p. 715; am. 1972, ch. 229, § 4, p. 597; am. 1974, ch. 13, § 166, p. 138.

54-2405 which comprised 1963, ch. 280, § 5, p. 715; am. 1965, ch. 201, § 8, p. 446; am. 1969, ch. 464, § 22, p. 1304; am. 1972, ch. 229, § 5, p. 597; am. 1974, ch. 13, § 167, p. 138; am. 1976, ch. 166, § 22, p. 596; am. 1980, ch. 247, § 70, p. 582.

54-2406 which comprised 1963, ch. 280, § 6, p. 715; am. 1972, ch. 229, § 6, p. 597.

54-2407 which comprised 1963, ch. 280, § 7, p. 715; am. 1972, ch. 229, § 7, p. 597.

54-2408 which comprised 1963, ch. 280, § 8, p. 715; am. 1972, ch. 229, § 8, p. 597; am. 1974, ch. 13, § 168, p. 138.

54-2409 which comprised 1963, ch. 280,

§ 9, p. 715; am. 1972, ch. 229, § 9, p. 597; am. 1974, ch. 13, § 169, p. 138; am. 1988, ch. 11, § 1, p. 13.

54-2410 which comprised 1963, ch. 280, § 10, p. 715; am. 1972, ch. 229, § 10, p. 597; am. 1974, ch. 13, § 170, p. 138; am. 1988, ch. 11, § 2, p. 13.

54-2411 which comprised 1963, ch. 280, § 11, p. 715; am. 1974, ch. 13, § 171, p. 138. 54-2412 which comprised 1963, ch. 280, § 12, p. 715; am. 1974, ch. 13, § 172, p. 138; am. 1993, ch. 216, § 81, p. 587.

54-2413 which comprised 1963, ch. 280, § 13, p. 715; am. 1972, ch. 229, § 11, p. 597; am. 1974, ch. 13, § 173, p. 138; am. 1991, ch. 30, § 12, p. 58; am. 1993, ch. 216, § 82, p. 587.

54-2414 which comprised 1963, ch. 280, § 14, p. 715; am. 1972, ch. 229, § 12, p. 597.

54-2415 which comprised 1963, ch. 280, § 15, p. 715; am. 1969, ch. 464, § 23, p. 1304; am. 1972, ch. 229, § 13, p. 597; am. 1976, ch. 166, § 23, p. 596; am. 1988, ch. 11, § 3, p. 13.

54-2416 which comprised 1963, ch. 280, § 16, p. 715; am. 1972, ch. 229, § 14, p. 597; am. 1974, ch. 13, § 174, p. 138; am. 1988, ch. 11, § 4, p. 13.

Effective Dates.

Section 4 of S.L. 2004, ch. 335 declared an emergency. Approved March 24, 2004.

54-2402. License required. — It shall be unlawful for any person who is not licensed under the provisions of this chapter to operate, offer to operate, be in responsible charge of, or to otherwise serve as operating personnel at any public drinking water system or any public wastewater system as defined in the provisions of this chapter. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. It shall be unlawful for any person to use, in connection with their name or otherwise assume or advertise, any title or description tending to convey the impression of being a water or wastewater system operator, unless such person has been duly registered and possesses a current license in good standing issued by the board or is otherwise exempted under the provisions of this chapter. Furthermore, it shall be unlawful for any person who is the designated responsible charge operator of a drinking water or wastewater system to not be licensed at a category class equal to or greater than the classification of the drinking water or wastewater system. It shall be unlawful for any person to perform backflow assembly testing or inspection unless such person is licensed under the provisions of this chapter. The right to practice as a drinking water operator, wastewater operator, or backflow assembly tester shall be deemed a personal right, based on the qualifications of the individual as evidenced by a current license, and shall not be transferable. Provided however, that persons licensed, registered or otherwise regulated by the state of Idaho to practice a profession shall not be required to obtain a license under this act in order

to practice within the scope of practice of the profession for which they are licensed, registered or otherwise regulated.

History.

I.C., § 54-2402, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-2402 was repealed. See Prior
Laws, § 54-2401.

Compiler's Notes.

The words "this act", in the last sentence

refer to S.L. 2004, chapter 335, which is
codified as §§ 39-105, 54-2401 to 54-2414 and
67-2601. Probably the reference should be to
"this chapter," being chapter 24, title 54,
Idaho Code.

54-2403. Definitions. — As used in this chapter:

(1) "Backflow assembly tester" means a person who tests backflow prevention assemblies and who holds a current Idaho backflow assembly tester license.

(2) "Backflow prevention assembly" means a set of mechanical components, which prevents the undesired backflow of water or other liquids into a potable water system, and can be in-line tested and repaired.

(3) "Board" means the state board of drinking water and wastewater professionals as provided in section 54-2404, Idaho Code.

(4) "Bureau" means the Idaho bureau of occupational licenses.

(5) "Certified" means the board has confirmed that an applicant has met all the requirements for licensure under this chapter and has approved the issuance of a license to practice in Idaho under the provisions of this chapter.

(6) "Collection system" means that portion of the wastewater system in which wastewater is received from the premises of the discharger and conveyed to the point of treatment through a series of lines, pipes, manholes, pumps/liftstations and other appurtenances.

(7) "Distribution system" means that portion of the water utility in which water is stored and conveyed from the water treatment plant or other supply point to the premises of a consumer.

(8) "Drinking water operator" means any person who operates public drinking water systems, water treatment plants or other systems in order to treat water so that it is safe to drink and who holds a current Idaho water system operator license.

(9) "Laboratory analyst" means any person responsible for conducting laboratory analysis tasks in the laboratory of a wastewater system.

(10) "License" means a physical document issued by the bureau certifying that an individual has met the appropriate qualifications and has been granted the authority to practice in Idaho under the provisions of this chapter.

(11) "Operator" or "operating personnel" means any person who is employed, retained, or appointed to conduct the tasks associated with the day to day operation and maintenance of a public drinking water system or a public wastewater system.

(12) "Public drinking water system or public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Every community and nontransient noncommunity water system, and each transient water system using a surface water source or ground water source directly influenced by surface water, shall be operated by a certified drinking water operator.

(13) "Public wastewater system or wastewater system" means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a nonprofit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, nonmechanical septic tank and subsurface treatment and distribution system, or industrial wastewater systems under private ownership.

(14) "Responsible charge" means active, daily, on-site, or on call responsibility, for the performance of operations or active, ongoing, on-site and on call direction of employees and assistants at a public drinking water system or a public wastewater system.

(15) "Responsible charge operator" means an operator of a public drinking water system, designated by the system owner, who holds a valid certificate at a class equal to or greater than the drinking water system classification, who is in responsible charge of the public drinking water system.

(16) "Wastewater operator" means a person who operates public wastewater systems, or public wastewater treatment plants or other systems, in order to remove harmful pollutants from domestic and industrial liquid waste so that it is safe to return to the environment, and who holds a current Idaho wastewater system operator license.

History.

I.C., § 54-2403, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-2403 was repealed. See Prior Laws, § 54-2401.

54-2404. State board established — Manner of appointment — Qualifications — Terms of office — Removal from office. — (1) In order to safeguard the environment and protect the public health and establish the minimum competency requirements of persons whose duties are identified in this chapter, there is hereby established in the department of self-governing agencies a board of drinking water and wastewater professionals for drinking water and wastewater operators and backflow assembly testers, hereinafter called the board.

(2) The governor shall, within thirty (30) days after the effective date of this chapter, appoint seven (7) members to the board, two (2) of whom shall be drinking water system operators, two (2) of whom shall be wastewater system operators, and one (1) who shall be a backflow assembly tester, all of whom shall be citizens of the United States, residents of the state of Idaho and licensed under the provisions of this chapter, and one (1) who shall be lawfully entitled to reside in the United States and be a resident of the state of Idaho and not be licensed under the provisions of this chapter or otherwise affiliated with water or wastewater operations within five (5) years of the time of appointment, and one (1) who shall be the director of the Idaho department of environmental quality or the director's designated agent.

(3) The members of the first board shall serve for the following terms: one (1) drinking water member and one (1) wastewater member shall serve for one (1) year; one (1) drinking water member and one (1) wastewater member shall serve for two (2) years; and the backflow assembly tester and the public member shall serve for three (3) years from the effective date of appointment or until a successor is duly appointed and qualified. Upon the expiration of the term of any member of the board, the governor shall appoint each member for a term of three (3) years. Each member shall hold office until the expiration of the term for which said member is appointed. Each member shall serve until a successor is appointed. No member shall be appointed for more than two (2) successive terms or a total of two (2) terms during the life of the board or member.

(4) The governor may remove any member of the board for misconduct, incompetence, neglect of duty, or for any other cause.

History.

I.C., § 54-2404, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

Director of department of environmental
quality, § 39-106.

Prior Laws.

Former § 54-2404 was repealed. See Prior
Laws, § 54-2401.

Compiler's Notes.

The phrase "the effective date of this chapter," in subsection (2), refers to the effective date of S.L. 2004, ch. 335, which was March 24, 2004.

54-2405. State board procedures — Payment of expenses of board members. — (1) The members of the board shall, as soon as appointed, organize and at least annually thereafter elect from their number a chairman. The board shall hold at least two (2) meetings each year to transact such business as may be necessary to carry out the provisions of this chapter. Four (4) members of the board shall constitute a quorum and special meetings of the board shall be called by the chairman upon written request of any three (3) members; all meetings shall be open to the public.

(2) The members of the board shall be compensated as provided by section 59-509(m), Idaho Code, subject to availability of funds collected under the provisions of this chapter.

History.

I.C., § 54-2405, as added by 2004, ch. 335,
§ 1, p. 995; am. 2010, ch. 157, § 1, p. 332.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-2405 was repealed. See Prior Laws, § 54-2401.

Amendments.

The 2010 amendment, by ch. 157, substituted "59-509(m)" for "59-509(g)" in subsection (2).

54-2406. Powers and duties of board. — (1) It shall be the duty of the board to carry out the provisions of this chapter, review applications, conduct written examinations, charge such fees as the board deems reasonable to cover the cost of licensing, keep records of its transactions, administer disciplinary actions, and record all matters which appropriately may come before it. The board shall have the power to adopt and amend rules including, but not limited to, a code of ethics and standards of conduct that may be reasonably necessary for the proper performance of its duties and the administration of this chapter and the regulation of proceedings before the board. The board shall, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest.

(2) The board may adopt license requirements for subcategories based on the size and type of system or for other related areas of expertise, such as backflow assembly testers for public drinking water systems.

History.

I.C., § 54-2406, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-2406 was repealed. See Prior Laws, § 54-2401.

54-2407. Fees — Payment of costs and expenses. — (1) The bureau

of occupational licenses shall collect a fee not to exceed one hundred dollars (\$100) for each application, each administration of an examination, each original license, and each annual renewal of any license issued pursuant to this chapter, and shall deposit all fees in the state treasury in accordance with section 67-2605, Idaho Code. The actual fees shall be set by board rule. The bureau shall also collect a fee equal to that charged by the examination provider when an examination is required as a condition of licensure. All required fees shall not be prorated and are nonrefundable.

(2) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be charged against and paid from said fund [account].

History.

I.C., § 54-2407, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-2407 was repealed. See Prior Laws, § 54-2401.

Compiler's Notes.

The bracketed insertions in subsection (2) were added by the compiler to correct the name of the referenced account. See § 67-2605.

54-2408. Licenses — Records. — (1) The bureau of occupational licenses shall, upon the approval of the board and subject to the provisions of this chapter, register and issue licenses to persons who have been approved by the board in accordance with this chapter. The licenses shall bear on their face the seal of the state and the signature of the chief of the bureau of occupational licenses, and will be effective until the next birthday of the individual being certified. Licenses so issued shall be renewed annually in accordance with section 67-2614, Idaho Code. The provisions of sections 67-2609 through 67-2614, Idaho Code, shall apply to licenses issued pursuant to this chapter.

(2) The board shall keep and the bureau shall maintain a record of board proceedings and a register of all applications that show:

- (a) The name, age, social security number and residency of each applicant;
- (b) The date of application;
- (c) The place of business of such applicant;
- (d) The educational and other qualifications of each applicant;
- (e) Whether or not an examination was required;
- (f) Whether the applicant was rejected;
- (g) Whether a license was issued;
- (h) The dates of the action by the board;
- (i) Compliance with continuing education requirements; and
- (j) Such other information as may be deemed necessary by the board.

History.

I.C., § 54-2408, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-2408 was repealed. See Prior
Laws, § 54-2401.

54-2409. Application form — License categories — Qualifications for registration and license. — (1) The board shall approve an application form for the use of applicants. Each applicant shall submit an original application to the board and provide information and documentation as the board may require including, but not limited to, information relating to the education and experience of the applicant. The board shall accept for review the complete application of any person whose application, accompanied by the necessary documentation and fees, is submitted. The board shall carefully evaluate each application, and shall approve the registration and issuance of a license to any applicant of good moral character who has met the education, experience and examination requirements set forth in this chapter and the rules adopted pursuant to the provisions of this chapter. If the board finds upon the basis of evidence submitted, and in accordance with the provisions of this chapter, that the applicant does not meet the requirements, the application shall be denied and any fees submitted shall not be refunded.

(2) The board shall issue licenses in the following categories:

- (a) Drinking water distribution operator and drinking water treatment operator classes;
- (b) Wastewater treatment operator, wastewater collection system operator, and wastewater laboratory analyst classes;
- (c) Backflow assembly tester.

(3) Each applicant for licensure as a water system operator or wastewater system operator shall submit to the board a complete application with the required fee and provide documentation of having met the following requirements prior to being considered for a license:

- (a) Be a lawful resident of the United States;
- (b) Possess a high school diploma, GED, or the equivalent;
- (c) Document additional education as outlined by rule;
- (d) Document such experience as is required by rule;
- (e) Successful completion of and a passing grade on the required examination; and
- (f) Other such requirements as may be determined by board rule.

History.

I.C., § 54-2409, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES

Prior Laws.

Former § 54-2409 was repealed. See Prior Laws, § 54-2401.

54-2410. Endorsement — Licenses from other states. — Any person who holds a valid license to practice as a drinking water system operator or a wastewater system operator or a backflow assembly tester from any other state in which the legally enacted qualifications for licensure are not lower than the qualifications for licensure set forth in this chapter and in the rules adopted pursuant hereto, may upon proper application and payment of a fee as may be established by board rule not to exceed one hundred dollars (\$100), and with the approval of the board, be accepted for licensure under the provisions of this chapter.

History.

I.C., § 54-2410, as added by 2004, ch. 335, § 1, p. 995.

STATUTORY NOTES

Prior Laws.

Former § 54-2410 was repealed. See Prior Laws, § 54-2401.

54-2411. Annual renewal of license. — Every person licensed under the provisions of this chapter shall annually pay the prescribed renewal fee and certify compliance with continuing education requirements and provide such other information as the board may request. Any license canceled for failure to meet the renewal requirements may be reinstated according to section 67-2614, Idaho Code, except that in the case of a drinking water operator whose license has been canceled for a period of more than two (2) years, the person so affected shall be required to make application to the board, using the same forms and furnishing the same information and paying the same fee and successfully completing the same examination as is required of a person originally applying for a license of the same classification.

History.

I.C., § 54-2411, as added by 2004, ch. 335, § 1, p. 995; am. 2005, ch. 87, § 1, p. 305.

STATUTORY NOTES

Prior Laws.

Former § 54-2411 was repealed. See Prior Laws, § 54-2401.

54-2412. Revocation or suspension of license — Powers of board — Procedures for disciplinary proceedings. — (1) The board shall have the power to revoke, suspend, refuse to issue, refuse to renew, or

otherwise limit any license or certificate issued pursuant to the provisions of this chapter for any of the following:

- (a) Procuring a license or registration by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for licensure or through any form of fraud or misrepresentation;
- (b) Being convicted of a felony;
- (c) Misrepresentation, or fraudulent representation in the performance of any duty, conduct or activity regulated under this chapter;
- (d) Violating the provisions of this chapter or any rules of the board or any code of conduct or ethical standards adopted by the board;
- (e) Being negligent or incompetent;
- (f) Failing to provide appropriate and personal supervision, if acting as the designated responsible charge operator, to any person gaining experience under the provisions of this chapter.

(2) The board shall have the power to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire, relevant to any hearing before it of any matter which it has authority to investigate, and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of books, records or papers, directed to the sheriff of any county of the state of Idaho where such witness resides or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case.

(3) The procedures for disciplinary proceedings shall be in compliance with the Idaho administrative procedure act and the rules of the office of the attorney general and the bureau of occupational licenses.

History.

I.C., § 54-2412, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES

Cross References.

Administrative procedure act, § 67-5201 et seq.

Attorney general, § 67-1401 et seq.

Bureau of occupational licenses, § 67-2602.

Prior Laws.

Former § 54-2412 was repealed. See Prior Laws, § 54-2401.

54-2413. Violations and penalties. — Any person who shall practice or attempt to offer to practice as a drinking water operator or wastewater operator or backflow assembly tester, as defined in this chapter, without having at the time of so doing a current, unexpired, unrevoked, and unsuspended license issued under this chapter shall be deemed guilty of a misdemeanor and, for each violation, shall be subject to punishment by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for a period of not more than six (6) months, or both.

History.

I.C., § 54-2413, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES**Prior Laws.**

Former § 54-2413 was repealed. See Prior
Laws, § 54-2401.

54-2414. Duty of prosecuting attorney — Duty of attorney general. — It shall be the duty of the prosecuting attorney of each county to prosecute all violations of this chapter constituting a violation of criminal law and it shall be the duty of the attorney general of the state of Idaho to prosecute any administrative actions brought under the provisions of this chapter as requested by the board.

History.

I.C., § 54-2414, as added by 2004, ch. 335,
§ 1, p. 995.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.

Prior Laws.

Former § 54-2414 was repealed. See Prior
Laws, § 54-2401.

CHAPTER 25

HORSE RACING

SECTION.

- 54-2501. Short title.
- 54-2502. Definitions.
- 54-2503. Racing commission created — Appointment — Removal — Claims.
- 54-2504. Chairman — Quorum — Costs.
- 54-2505. Commission's annual report — Public record.
- 54-2506. Duties of commission and licensees — License fee.
- 54-2507. Authority of commission.
- 54-2508. License — Application therefor — Type and number of races — Fee per day — Refund — Cancellation — Hearing — Simulcast purse moneys fund.
- 54-2509. Penalty for violations of law — Power of commission.

SECTION.

- 54-2510. Race exclusively for Idaho bred horses — Bonus for Idaho bred winners.
- 54-2511. Public liability insurance.
- 54-2512. Pari-mutuel betting — Other betting illegal.
- 54-2513. Horse racing — Distributions of deposits — Breakage.
- 54-2514. Dog racing — Distribution of deposits — Breakage.
- 54-2514A. Dog racing illegal after the effective date of this act.
- 54-2515. Exemption from fee payment — Payment of sums due commission — Payment to public school income fund.
- 54-2516. Licensee's right to withhold deposits.
- 54-2517. Bond requirement.

54-2501. Short title. — This act may be cited as the "Idaho racing act."

History.

1963, ch. 64, § 1, p. 246; am. 1987, ch. 316, § 1, p. 660.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

64, which is compiled as §§ 54-2501 to 54-2512, 54-2516, and 54-2517.

JUDICIAL DECISIONS**ANALYSIS**

Contracting with fair board.

Pari-mutuel wagering.

Public policy.

Scheduling of races.

Contracting with Fair Board.

Nothing in this chapter restricts the right of the fair board to enter into contracts with the thoroughbred racing association for certain numbers of thoroughbred races. *Idaho Quarterhorse Breeders Ass'n v. Ada County Fair Bd.*, 101 Idaho 339, 612 P.2d 1186 (1980).

Pari-Mutuel Wagering.

The legislative scheme of regulation and licensing relates only to the conducting of horse racing when such is accompanied by a pari-mutuel system of wagering. *Idaho Quarterhorse Breeders Ass'n v. Ada County Fair Bd.*, 101 Idaho 339, 612 P.2d 1186 (1980).

Public Policy.

This chapter is not in contravention of the Idaho Const., Art. III, § 24, as the act itself is a matter of public policy. *Oneida County Fair*

Bd. v. Smylie, 86 Idaho 341, 386 P.2d 374 (1963).

Scheduling of Races.

Where the record indicated that if more quarterhorse races were held at better positions on the daily card, the reasoned judgment of the park officials was that the quality of competing horses and, thus, the quality of races would drop and the pari-mutuel handle generated would decrease, and in turn, there would be a decrease in moneys generated for the public schools, there was a sufficient rational basis to sustain the constitutionality of the actions of the officials in scheduling fewer quarterhorse races. *Idaho Quarterhorse Breeders Ass'n v. Ada County Fair Bd.*, 101 Idaho 339, 612 P.2d 1186 (1980).

Cited in: *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

RESEARCH REFERENCES

C.J.S. — 38 C.J.S., Gaming, § 1 et seq.

54-2502. Definitions. — Unless the context otherwise requires, words and phrases as used herein shall mean:

(1) "Commission" means the Idaho state racing commission, hereinafter created.

(2) "Gross daily receipts" means the total of all sums deposited in all pools for each race day.

(3) "Horsemen's group" means an organization composed of licensed owners and/or trainers duly registered with the secretary of state and recognized by the Idaho [state] racing commission.

(4) "Host facility" means the racetrack at which the race is run, or the facility which is designated as the host facility if the race is run in a jurisdiction which is not participating in the interstate combined wagering pool.

(5) “Host jurisdiction” means the jurisdiction in which the host facility is located.

(6) “Interstate common wagering pool” means a pari-mutuel pool established in one (1) jurisdiction which is combined with comparable pari-mutuel pools from one (1) or more racing jurisdictions. Such pool is established for the purpose of establishing pay-off prices in the various jurisdictions.

(7) “Pari-mutuel” means any system whereby wagers with respect to the outcome of a race are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under state law, and in which the participants are wagering with each other and not against the operator.

(8) “Persons” means and includes individuals, firms, corporations and associations.

(9) “Pool” means the total sum of all moneys wagered in each race for each type of bet. Types of bets include win, place, show, quinella, daily double, exacta, trifecta, etc., and such other types as are approved by the commission from time to time.

(10) “Race meet” means and includes any exhibition of thoroughbred, purebred, and/or registered horse racing, mule racing or dog racing, where the pari-mutuel system of wagering is used. Singular includes the plural and plural includes the singular; and words importing one gender shall be regarded as including all other genders.

(11) “Racing jurisdiction” or “jurisdiction” means a governmental jurisdiction responsible for the regulation of pari-mutuel racing in that jurisdiction.

(12) “Simulcast” means the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location.

History.

1963, ch. 64, § 2, p. 246; am. 1969, ch. 221, § 1, p. 724; am. 1984, ch. 83, § 1, p. 158; am. 1985, ch. 194, § 1, p. 494; am. 1987, ch. 316, § 2, p. 660; am. 1988, ch. 141, § 1, p. 256; am.

1991, ch. 56, § 1, p. 106; am. 1992, ch. 19, § 1, p. 55; am. 1996, ch. 380, § 1, p. 1287; am. 1998, ch. 97, § 1, p. 345; am. 2006, ch. 147, § 1, p. 461.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2006 amendment, by ch. 147, in subsection (3), deleted “breeders” following “licensed owners” and “as the majority of the horsemen at the track” at the end of the subsection; added present subsection (7) and redesignated former subsections (7) to (10) as (8) to (11); and added subsection (12).

Compiler’s Notes.

The bracketed insertion in subsection (3) was added by the compiler to correct the name of the referenced agency.

Effective Dates.

Section 2 of S.L. 1984, ch. 83 declared an emergency. Approved March 26, 1984.

JUDICIAL DECISIONS

Pari-Mutuel Wagering.

The legislative scheme of regulation and licensing relates only to the conducting of horse racing when such is accompanied by a

pari-mutuel system of wagering. Idaho Quarterhorse Breeders Ass'n v. Ada County Fair Bd., 101 Idaho 339, 612 P.2d 1186 (1980).

54-2503. Racing commission created — Appointment — Removal — Claims. — There is hereby created in the Idaho state police the Idaho state racing commission, to consist of three (3) members, who shall be citizens, residents, and qualified electors of the state of Idaho.

The members of said commission shall be appointed by the governor within thirty (30) days after this act takes effect, one (1) for a term to expire on the Thursday following the second Monday in January, 1965, and one (1) for a term to expire on the Thursday following the second Monday in January, 1967, and one (1) for a term to expire on the Thursday following the second Monday in January, 1969, and upon the expiration of the term of any member of said commission, the governor shall appoint a successor for a term of six (6) years. All appointments to the Idaho state racing commission shall be subject to the approval of the senate.

Each member shall hold office until his successor is appointed and qualified. Vacancies on the commission shall be filled by appointment to be made by the governor for the unexpired term.

Any member may be removed from office by the governor for cause after a public hearing. Notice of said hearing shall fix the time and place of hearing and shall specify the charges. Copy of the notice of hearing shall be served on the member by mailing the same to the member at his last known address at least ten (10) days before the date fixed for said hearing.

History.

1963, ch. 64, § 3, p. 246; am. 1969, ch. 221, § 1, p. 724; am. 1971, ch. 259, § 1, p. 1037;

am. 1974, ch. 27, § 192, p. 811; am. 1987, ch. 316, § 3, p. 660; am. 2000, ch. 469, § 127, p. 1450.

STATUTORY NOTES

Cross References.

Idaho state police, § 67-2901 et seq.

means within 30 days of the effective date of S.L. 1963, ch. 64, which was March 5, 1963.

Compiler's Notes.

The phrase "within thirty (30) days after the act takes effect", in the second paragraph,

Effective Dates.

Section 196 of S.L. 1974, ch. 27 provided the act should be in full force and effect on and after July 1, 1974.

54-2504. Chairman — Quorum — Costs. — The commission shall organize by electing one (1) of its members chairman. Two (2) members of the commission shall constitute a quorum for the transaction of any and all business of the commission.

Each member of the board shall be compensated as provided by section 59-509(h), Idaho Code. Moneys used for the compensation of members shall be drawn from commission funds.

The commission may incur all such costs, charges and expenses as are reasonably necessary in carrying out the intent and purposes of this act.

All claims and expenditures under this act shall be first audited and

passed upon by the commission, and, when approved, shall be paid in the manner provided by law for the payment of claims against the state of Idaho.

History. am. 1979, ch. 251, § 1, p. 539; am. 1980, ch. 1963, ch. 64, § 4, p. 246; am. 1969, ch. 221, 247, § 71, p. 582; am. 1992, ch. 62, § 1, p. § 1, p. 724; am. 1971, ch. 259, § 2, p. 1037; 195.

STATUTORY NOTES

Compiler's Notes. is compiled as §§ 54-2501 to 54-2512, 54-2516, and 54-2517.
The words "this act", in the third and fourth paragraphs, refer to S.L. 1963, ch. 64, which

54-2505. Commission's annual report — Public record. — The commission shall keep detailed records of all meetings and of the business transacted therein, and all licenses applied for and issued, reports of which shall be embodied in an annual report which the commission shall prepare and submit to the governor on or before the thirty-first day of March of each year. Said annual report shall cover the activities of the commission, including the financial report of the commission and a financial summary of licensees subject to section 54-2508, Idaho Code, and organizations of licensees defined in section 54-2502(3), Idaho Code, for the preceding year in addition to the aforementioned.

All records of the commission shall be public records, and as such, subject to public inspection.

History. 1963, ch. 64, § 5, p. 246; am. 1969, ch. 221, § 1, p. 724; am. 2005, ch. 264, § 1, p. 809.

STATUTORY NOTES

Compiler's Notes. Idaho state horse racing commission, and such new title shall be substituted for the former name wherever such former name appears in chapter 25, title 54, Idaho Code.
The word "commission" was substituted for "committee" because of S.L. 1969, ch. 221, § 1, which read: "The name of the Idaho horse racing committee is hereby changed to the

54-2506. Duties of commission and licensees — License fee. — It shall be the duty of the commission, as soon as possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern race meets and the pari-mutuel system. It shall be the duty of each person holding a license under the authority of the act to comply with this act and with all the rules and regulations promulgated and all orders issued by the commission.

It shall be unlawful for any person, except race meet licensees coming within the provisions of section 54-2508, Idaho Code, to participate, directly or indirectly, in any race meet without first securing and having in full force and effect, a license therefor from the commission. The license fee for such license shall be set by the commission and shall be paid to the commission.

The commission shall, by rule and regulation, determine which persons participating, directly or indirectly, in race meets shall require licenses.

History.

1963, ch. 64, § 6, p. 246; am. 1969, ch. 221, § 2, p. 724; am. 1974, ch. 96, § 1, p. 1196; am. 1983, ch. 64, § 1, p. 147.

STATUTORY NOTES**Compiler's Notes.**

The terms "the act" and "this act" in the first paragraph refer to S.L. 1963, ch. 64, which is compiled as §§ 54-2501 to 54-2512, 54-2516, and 54-2517.

Effective Dates.

Section 2 of S.L. 1983, ch. 64 declared an emergency. Approved March 21, 1983.

JUDICIAL DECISIONS**Interpretation of Rules.**

As enacted pursuant to this section, Rule 725 of the commission is not merely an evidentiary rule; although it speaks in terms of providing a means for the stewards to prove a prima facie case that a horse has been illegally medicated, in effect, it is a substantive, prohibitory rule. *Moosman v. Idaho Horse Racing Comm'n*, 117 Idaho 949, 793 P.2d 181 (1990) (see now IDAPA 11.04.11.000 et seq.).

Reading commission Rules 716 and 725 together provides a constitutionally sufficient meaning to the term "nonapproved medication" used in Rule 725; the key to understanding how these rules work together is to recognize that Rule 716 provides the means by which medications may be approved. *Moosman v. Idaho Horse Racing Comm'n*, 117 Idaho 949, 793 P.2d 181 (1990) (see now IDAPA 11.04.11.000 et seq.).

54-2507. Authority of commission. — (1) The commission created by this act is hereby authorized and it shall be its duty to license, regulate, and supervise all race meets held in this state under the terms of this act, and to cause the various places where race meets are held to be visited and inspected at least once a year.

(2) Notwithstanding any other provision of this chapter, the commission may authorize any licensee to participate in an interstate common wagering pool with one (1) or more other racing jurisdictions. Anytime that a licensee participates in an interstate pool, the licensee may adopt, with the authorization of the commission, the take-out of the host jurisdiction or facility.

(3) The commission may permit a licensee to use one (1) or more of its races for an interstate common wagering pool at locations outside its jurisdiction, and may allow pari-mutuel pools in other states to be combined with pari-mutuel pools in its jurisdiction for the purpose of establishing an interstate common wagering pool.

History.

1963, ch. 64, § 7, p. 246; am. 1969, ch. 221, § 1, p. 724; am. 1991, ch. 56, § 2, p. 106; am. 1992, ch. 19, § 2, p. 55.

STATUTORY NOTES**Compiler's Notes.**

The words "this act", in subsection (1), refer

to S.L. 1963, ch. 64, which is compiled as §§ 54-2501 to 54-2512, 54-2516, and 54-2517.

54-2508. License — Application therefor — Type and number of races — Fee per day — Refund — Cancellation — Hearing — Simulcast purse moneys fund. — It shall be unlawful for any person to hold any race meet in this state without having first obtained and having in force and effect a license issued by the commission as in this chapter provided. Every person making application for a license to hold a race meet, under the provisions of this chapter, shall file an application with the commission which shall set forth the time, place and number of days such will continue, an agreement with a horsemen's group as the term "horsemen's group" is defined in section 54-2502, Idaho Code, and such other information as the commission may require. The agreement shall be reached voluntarily or pursuant to binding arbitration in conformance with chapter 9, title 7, Idaho Code, and shall address, but not be limited to, number of live race days and percentage of the live race and simulcast handle that is dedicated to the live horse race purse structure. In addition, the agreement shall provide that all simulcast purse moneys that are accrued as required by the horsemen's agreement be held in the simulcast purse moneys fund created pursuant to the provisions of this section. Race days agreed upon shall be submitted to the Idaho [state] racing commission for its approval.

No person who has been convicted of any crime involving moral turpitude shall be issued a license of any kind, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules of the commission, or who has failed to pay any of the fees, taxes or moneys required under the provisions of this chapter.

All applications to hold race meets shall be submitted to the commission which shall act upon such applications within thirty (30) days. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue.

The license issued shall specify the kind and character of the race meets to be held, the number of days the race meet shall continue and the number of races per day. For those licensees or facilities that have had a total race handle from both live races and simulcast races exceeding five million dollars (\$5,000,000) during the last calendar year in operation, the number of races per day shall not be less than eight (8), and the number of days of racing shall not be less than forty-six (46) unless otherwise agreed by the licensee and the horsemen's group. Provided however, the number of days of racing shall not be less than fifteen (15) and the number of days of racing shall be approved by the Idaho [state] racing commission. For those licensees or facilities that have had a total race handle from both live races and simulcast races of five million dollars (\$5,000,000) or less during the last calendar year in operation, the number of races per day shall not be less than six (6) and the number of days of racing shall not be less than two (2). The licensee shall pay in advance of the scheduled race meet to the state treasurer a fee of not less than twenty-five dollars (\$25.00) for each day of racing, which fees shall be placed in the public school income fund of the state of Idaho. Provided, that if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee held may be

refunded the licensee, if the commission deems the reason for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this chapter, pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three (3) days' notice in writing shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

The simulcast purse moneys fund is hereby created in the state treasury. Moneys in the fund shall consist of all simulcast purse moneys that are accrued as required by horsemen's agreements. Moneys in the fund are hereby perpetually appropriated to the Idaho state racing commission for distribution pursuant to the provisions of horsemen's agreements and rules of the commission. The commission is authorized to promulgate rules providing for the receipt, deposit, withdrawal and distribution of such moneys. The state treasurer shall invest idle moneys in the fund and any interest received on those investments shall be returned to the fund.

History.

1963, ch. 64, § 8, p. 246; am. 1969, ch. 221, § 1, p. 724; am. 1971, ch. 259, § 3, p. 1037; am. 1980, ch. 123, § 1, p. 278; am. 1990, ch. 424, § 1, p. 1173; am. 1996, ch. 380, § 2, p.

1287; am. 1997, ch. 351, § 1, p. 1038; am. 2001, ch. 72, § 1, p. 151; am. 2002, ch. 56, § 1, p. 124; am. 2006, ch. 159, § 1, p. 477; am. 2011, ch. 306, § 1, p. 873.

STATUTORY NOTES

Cross References.

Public school income fund, § 33-903.

State treasurer, § 67-1201 et seq.

group" at the end of the second sentence and added the third sentence.

Amendments.

The 2006 amendment, by ch. 159, added "Simulcast purse moneys fund" to the end of the section heading; substituted "this chapter" for "this act" throughout the section; added the next-to-the last sentence in the first paragraph; in the fourth paragraph, inserted "or facilities" and "and the number of days of racing shall not be less than forty-six (46)" in the second sentence, and "and the number of days of racing shall not be less than two (2)" in the third sentence; and added the last paragraph.

The 2011 amendment, by ch. 306, in the fourth paragraph, added "unless otherwise agreed by the licensee and the horsemen's

Compiler's Notes.

The bracketed insertions in the first and fourth paragraphs were added by the compiler to correct the name of the referenced agency.

Effective Dates.

Section 4 of S.L. 1971, ch. 259 declared an emergency. Approved March 25, 1971.

Section 3 of S.L. 2001, ch. 72 declared an emergency. Approved March 22, 2001.

Section 2 of S.L. 2002, ch. 56 declared an emergency. Approved March 4, 2002.

Section 3 of S.L. 2006, ch. 159 declared an emergency. Approved March 22, 2006.

Section 2 of S.L. 2011, ch. 306 declared an emergency. Approved April 11, 2011.

54-2509. Penalty for violations of law — Power of commission. —

(1) Any person holding a race meet, and any other person required by this act or the rules of the commission to be licensed, participating, directly or indirectly, in a race meet, without first being licensed by the commission, and any person violating any of the terms or provisions of this act is guilty of a misdemeanor.

(a) There shall be an absolute prohibition of the use of live lures in the state of Idaho for the training of or racing of racing dogs. Any violation of the provisions of this section shall be a felony punishable by a fine not exceeding twenty-five thousand dollars (\$25,000), or by a prison term not to exceed seven (7) years, or by both such fine and imprisonment. In addition the state racing commission shall not license any breeder, trainer or kennel whose dogs have been trained or raced with the use of live lures. The [Idaho state] racing commission shall adopt rules that will provide for the humane treatment of the dogs involved in any aspect of training for or engaging in dog racing.

(2) The commission shall have the power to exclude from any and all race courses in this state any person who the commission deems detrimental to the best interests of racing, or any person who violates any of the provisions of this act or any rule or order of the commission.

(3) It shall be lawful to conduct race meets on or at a race track, or otherwise, at any time during the week.

(4) Any person maintaining a license issued by the commission, who violates the provisions of this act or the rules of the commission, may have such license suspended or revoked. In addition to such suspension or revocation the commission may levy a monetary penalty commensurate with the gravity of the offense, not to exceed two thousand five hundred dollars (\$2,500). The commission, by rule shall provide a summary procedure for such determination at the track, the penalty amount for specified violations, and shall provide for an appeal of any summary decision to the commission. At-the-track summary proceedings shall not be subject to the provisions of chapter 52, title 67, Idaho Code. Hearings and appeals before the commission as allowed by this act or the rules of the commission shall be subject to chapter 52, title 67, Idaho Code, except the provisions of section 67-5254(2), Idaho Code, which is inconsistent with the unique requirements of racing.

(5) All law enforcement officers in this state shall assist in the enforcement of this act and the rules of the commission.

History.

1963, ch. 64, § 9, p. 246; am. 1969, ch. 221, § 3, p. 724; am. 1977, ch. 230, § 1, p. 685; am.

1980, ch. 58, § 1, p. 116; am. 1987, ch. 316, § 7, p. 660; am. 1988, ch. 141, § 2, p. 256; am. 1996, ch. 75, § 1, p. 241.

STATUTORY NOTES

Compiler's Notes.

The words "this act", near the end of the introductory paragraph in subsection (1) and in subsection (2), refer to S.L. 1963, ch. 64, which is compiled as §§ 54-2501 to 54-2512, 54-2516, and 54-2517.

The term "this act", near the beginning of the introductory paragraph in subsection (1) and in subsections (4) and (5), was added by S.L. 1969, chapter 221, which is codified as §§ 54-2502 to 54-2513, 54-2515, and 54-2517.

The bracketed insertion in paragraph (1)(a) was added by the compiler to correct the name of the referenced agency.

As amended, this section has a paragraph (1)(a), but no paragraph (1)(b).

Effective Dates.

Section 2 of S.L. 1977, ch. 230 declared an emergency. Approved March 31, 1977.

Section 2 of S.L. 1980, ch. 58 declared an emergency. Approved March 10, 1980.

JUDICIAL DECISIONS

ANALYSIS

Double jeopardy.
 Monetary penalties.
 Power of commission.
 Res judicata.
 Suspensions.

Double Jeopardy.

Disciplinary actions by administrative agencies, such as the Idaho state horse racing commission, are civil in nature and do not violate the federal constitutional guaranty against double jeopardy or the state statutory prohibition against multiple punishment. *Pence v. Idaho State Horse Racing Comm'n*, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

Monetary Penalties.

Fines within ranges established by the commission may be summarily imposed at the track, subject to review if appealed. *Pence v. Idaho State Horse Racing Comm'n*, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

Power of Commission.

The commission has sole authority to suspend or revoke licenses and has independent authority to fix monetary penalties. *Pence v.*

Idaho State Horse Racing Comm'n, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

Res Judicata.

Disciplinary action taken by a local board of stewards against a licensed jockey who was found in possession of an electric prodding device was not res judicata and did not bar further action on the subject by the commission. *Pence v. Idaho State Horse Racing Comm'n*, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

Suspensions.

Horseracing commission rule, making the trainer absolute insurer of the condition of his horses, did not establish any standards or impose any duty which could be violated and, accordingly, could not serve as a basis for suspending the licenses of such trainers. *Schvaneveldt v. Idaho State Horse Racing Comm'n*, 99 Idaho 131, 578 P.2d 673 (1978).

54-2510. Race exclusively for Idaho bred horses — Bonus for Idaho bred winners. — (1) For the purpose of encouraging the breeding, within this state, of valuable thoroughbred, purebred and/or registered horses, at least one (1) race each day at each horse race meet shall be limited to Idaho bred horses. If in the opinion of the commission sufficient competition cannot be had among such class of horses, said race may be written as an Idaho bred preferred race instead.

(2) A sum equal to ten percent (10%) of the first place purse money won by an Idaho bred horse shall be paid by the licensee conducting the race meet to the breeder of such horse. All purse moneys derived from pari-mutuel racing and all purse enhancement moneys from the Idaho state racing commission shall be included in the calculation of these breeder payments. All nominating and sustaining fees, and any moneys from outside sponsors shall be excluded from the calculation of these breeder payments.

History.

1963, ch. 64, § 10, p. 246; am. 1969, ch. 221,

§ 1, p. 724; am. 1987, ch. 316, § 4, p. 660; am. 2008, ch. 26, § 1, p. 39.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 26, in the section catchline, substituted "bonus for Idaho bred winners" for "bonus for winner"; added the subsection designations; in the last sentence in subsection (1), substituted "said

race may be written as an Idaho bred preferred race instead" for "said race may be eliminated for said days and a substitute provided instead"; and in subsection (2), substituted "ten percent (10%) of the first place purse money" for "ten per cent (10%) of the

first money of every purse," and added the last two sentences.

JUDICIAL DECISIONS

Cited in: Idaho Quarterhorse Breeders Ass'n v. Ada County Fair Bd., 101 Idaho 339, 612 P.2d 1186 (1980).

54-2511. Public liability insurance. — For the protection of the public, and all members thereof, the exhibitors and visitors, every person licensed to conduct a race meet under the provisions of this act shall carry public liability insurance in an amount and form of contract and with a company to be approved by the commission.

History.

1963, ch. 64, § 11, p. 246; am. 1969, ch. 221, § 1, p. 724.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1963, ch. 64, which is compiled as §§ 54-2501 to 54-2512, 54-2516, and 54-2517.

The word "commission" was substituted for "committee" because of S.L. 1969, ch. 221,

§ 1, which read: "The name of the Idaho horse racing committee is hereby changed to the Idaho state horse racing commission, and such new title shall be substituted for the former name wherever such former name appears in chapter 25, title 54, Idaho Code."

54-2512. Pari-mutuel betting — Other betting illegal. — (1) Any licensee conducting a race meet under this chapter may provide a place or places in the race meet grounds or enclosure at which such licensee may conduct and supervise the use of the pari-mutuel system by patrons on the result of the races conducted by such licensee at such race meet and, upon written application by a licensee and approval by the commission, on the result of simulcast and/or televised races. The commission shall issue no more than one (1) license to simulcast per live race meet licensee and there shall be no more simulcasting sites in the state than there are licensed live race meet sites.

(2) Licenses authorizing simulcast and/or televised races will be regulated by the commission, in addition to its other responsibilities, for the purpose of enhancing, promoting, and protecting the live race industry in the state of Idaho. No license authorizing simulcasting and/or televised races shall be issued to or renewed for persons that are not also licensed to conduct live race meets in the state of Idaho. Persons applying for a simulcast and/or televised race license shall have an agreement reached voluntarily or pursuant to binding arbitration in conformance with chapter 9, title 7, Idaho Code, with a horsemen's group as the term "horsemen's group" is defined in section 54-2502, Idaho Code. The agreement shall address, but not be limited to, number of live race days and percentage of the live race and simulcast handle that is dedicated to the live horse race purse structure. In addition, the agreement shall provide that all simulcast purse moneys that are accrued as required by the horsemen's agreement be

held in the simulcast purse moneys fund created pursuant to the provisions of section 54-2508, Idaho Code. Race days agreed upon shall be submitted to the Idaho [state] racing commission for its approval.

(3) Upon written application by a live horse race licensee and approval by the Idaho state racing commission, a license may be issued to conduct and supervise the use of the pari-mutuel system by patrons on the result of simulcast and/or televised races in a facility not located on the grounds of a live horse race meet facility, but within the county that the live horse race facility is located, subject to the following restrictions:

(a) In addition to the distribution and payment of the handle as described in section 54-2513, Idaho Code, a licensee operating under a license described in this subsection shall pay to the Idaho state racing commission for deposit in the live horse race purse distribution fund, a minimum of one percent (1%) of the gross daily receipts from simulcast and/or televised races. The Idaho state racing commission shall distribute the moneys from the live horse race purse distribution fund to those live horse race licensees that ran less than fifteen (15) live race days during the preceding calendar year. The distribution shall be made by dividing the total number of live race days of all of the qualified live horse racetracks combined into the moneys collected by the fund in any one (1) calendar year and by multiplying the result by the number of days run by each of the respective live horse racetracks individually; and

(b) Additionally, the licensee shall pay to the Idaho state racing commission a minimum of one percent (1%) of the gross daily receipts from simulcast and/or televised races conducted pursuant to the [live horse] race purse distribution fund to the licensee whose license is being utilized to conduct simulcast and/or televised races pursuant to this section. These moneys shall be used by the licensee solely for live horse race meet purses; and

(c) Approval must be obtained from the board of county commissioners; and

(d) A license to conduct and supervise the use of the pari-mutuel system by patrons on the result of simulcast and/or televised races issued pursuant to this section may be leased to another person or entity but only with the approval of the Idaho state racing commission. A lessee of such a license shall be held by the Idaho state racing commission to the same standards as the original licensee.

(4) Upon written application by a live horse race licensee and approval by the Idaho state racing commission, a license may be issued to conduct and supervise the use of the pari-mutuel system by patrons on the result of simulcast and/or televised races in a facility located in another county within the state other than the county where the licensee's live racetrack facility is located subject to the following restrictions:

(a) In addition to the distribution and payment of the handle as described in section 54-2513, Idaho Code, a licensee operating under a license described in this subsection shall pay to the Idaho state racing commission for deposit in the live horse race purse distribution fund, a minimum of one percent (1%) of the gross daily receipts from simulcast and/or

televised races. The Idaho state racing commission shall distribute the moneys from the live horse race purse distribution fund to those live horse race licensees that ran less than fifteen (15) live race days during the preceding calendar year. The distribution shall be made by dividing the total number of live race days of all of the qualified live horse racetracks combined into the moneys collected by the fund in any one (1) calendar year and by multiplying the result by the number of days run by each of the respective live horse racetracks individually; and

(b) Additionally, the licensee shall pay to the Idaho state racing commission a minimum of one percent (1%) of the gross daily receipts from simulcast and/or televised races conducted pursuant to the live horse race purse distribution fund to the licensee whose license is being utilized to conduct simulcast and/or televised races pursuant to this section. These moneys shall be used by the licensee solely for live horse race meet purses; and

(c) Approval must be obtained from the board of county commissioners of the county in which the simulcast and/or televised race facility is to be located; and

(d) A license to conduct and supervise the use of the pari-mutuel system by patrons on the result of simulcast and/or televised races issued under this section may be leased to another person or entity, but only with the approval of the Idaho state racing commission. A lessee of such a license shall be held by the Idaho state racing commission to the same standards as the original licensee.

(e) No simulcast and/or televised race license transferred from one (1) county to another shall be located in a facility within thirty (30) miles of a live horse racetrack without the approval of that live horse racetrack facility.

(f) No simulcast and/or televised race license can be transferred into a county that has had a live race license within the prior five (5) years.

(5) No more than one (1) simulcast and/or televised race facility per county shall be allowed. This includes the one (1) simulcast license authorized in section 54-2514A, Idaho Code.

(6) There is hereby created in the state treasury the live horse race purse distribution fund, to which shall be deposited moneys received by the Idaho state racing commission for the purposes described in this section. All moneys in the live horse race purse distribution fund are hereby perpetually appropriated to the Idaho state racing commission for payment as required in this section. Payments by the Idaho state racing commission from the live horse race purse distribution fund to the recipient live horse racetracks shall be made no later than thirty (30) days after Idaho state racing commission approval of a live race meet license application for the forthcoming calendar year.

(7) Once a total handle exceeding fourteen million dollars (\$14,000,000) is realized from simulcasting and/or televised races conducted pursuant to this section in any one (1) calendar year, the Idaho state racing commission shall submit to the Idaho horse board a sum of five percent (5%) of the balance over fourteen million dollars (\$14,000,000), but not to exceed twelve

thousand five hundred dollars (\$12,500) to be used by the Idaho horse board for youth programs and to the "Idaho Robert R. Lee Promise Scholarship Program" as detailed in chapter 43, title 33, Idaho Code, a sum of five percent (5%) of the balance over fourteen million dollars (\$14,000,000), but not to exceed twelve thousand five hundred dollars (\$12,500).

(8) Such pari-mutuel system conducted at such race meet shall not under any circumstances, if conducted under the provisions of this chapter and in conformity thereto and to the rules of the commission, be held or construed to be unlawful, other statutes of this state to the contrary notwithstanding.

(9) The participation by a licensee in an interstate combined wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located.

(10) Advance deposit wagering on live and/or simulcast horse racing conducted by licensees is hereby declared to be lawful and within the scope of the licensee's license. As used in this section, "advance deposit wagering" means a form of wagering in which an account holder may deposit money with a licensee and then use the balance to fund wagers. The bettor can then contact the licensee from a location without actually being physically present at the licensee's premises in order to communicate the desired use of those funds for wagering purposes. However, no wager can be accepted by the licensee that exceeds the amount in the account held by the licensee for the person placing the wager. Any advance deposit wagering conducted by a person with a provider outside of the state by telephone or other electronic means shall be a felony unless that provider is licensed by the Idaho state racing commission and provides a source market fee of not less than ten percent (10%) of the handle forwarded monthly to the commission. In order to receive an advance deposit wagering license, the applicant must comply with the provisions of subsection (12) of this section and must also reach a nondiscriminatory agreement regarding signal costs with any licensed facility in Idaho if such provider or affiliate is sending interstate simulcast signals to such licensed facility in Idaho. All moneys in the advance deposit wagering accounts held by the commission are hereby continuously appropriated to the commission for payment as required by this section. Payments to recipients shall be made annually. Distribution of the source market fee shall be forty percent (40%) to purses to be deposited directly into the horsemen's purse account at all tracks weighted by number of races ran through the year of distribution, thirty percent (30%) to the simulcast sites in the state weighted by the annual simulcast handle, five percent (5%) to the track distribution fund [account], five percent (5%) to the breed distribution fund [account], five percent (5%) to the Idaho state racing commission, five percent (5%) to the public school income fund, and ten percent (10%) for track operating expenses at the live tracks with distribution weighted on the number of race days. All moneys in the track operating accounts are hereby continuously appropriated to the commission for payment as required by this section. For purposes of this section, wagering instructions concerning funds held in an advance deposit account shall be deemed to be issued within the licensee's enclosure. As used in this section,

“source market fee” means that part of a wager, made outside of the state by an Idaho resident, that is returned to the state of Idaho. The commission may promulgate rules pursuant to chapter 52, title 67, Idaho Code, to implement the provisions of this subsection.

(11) Pari-mutuel taxes or commissions may not be imposed on any amounts wagered in an interstate combined wagering pool other than amounts wagered within this jurisdiction.

(12) No licensee shall engage in any anticompetitive or deceptive practices in the process of contracting for the right to send any interstate simulcast signal to a licensed facility in Idaho. For purposes of this subsection, anticompetitive or deceptive practices shall include, but not be limited to:

(a) Any agreement to charge excessive or unreasonable fees for the right to receive an interstate signal. In determining whether a fee is excessive or unreasonable, the commission shall consider prevailing rates paid for comparable signals in the past, prevailing rates paid outside Idaho and whether any commonality of ownership or revenue sharing exists, partially or wholly, between the Idaho licensee and the entity receiving the simulcast fees; or

(b) Any agreement, combination, trust or joint enterprise with any other track or entity in which multiple interstate signals are bundled together for the purpose of securing an excessive or unreasonable fee for one (1) or more signals in the group in exchange for the right to receive any of the signals in the group; or

(c) Any other activity with the purpose or effect of artificially inflating prices beyond reasonable market rates or passing on or attempting to pass on any portion of the ten percent (10%) advance deposit wagering fee to licensed facilities in Idaho.

The commission may suspend or revoke licenses and may impose civil penalties of up to ten thousand dollars (\$10,000) per occurrence for violation of this subsection.

(13) It shall be unlawful to conduct pool selling, bookmaking, or to circulate handbooks, or to bet or wager on a race of any licensed race meet, other than by the pari-mutuel system; and it shall further be unlawful knowingly to permit any minor to use the pari-mutuel system.

History.

1963, ch. 64, § 12, p. 246; am. 1969, ch. 221, § 1, p. 724; am. 1986, ch. 69, § 1, p. 194; am. 1990, ch. 374, § 1, p. 1036; am. 1991, ch. 56, § 3, p. 106; am. 1996, ch. 380, § 3, p. 1287;

am. 1997, ch. 351, § 2, p. 1038; am. 2000, ch. 245, § 1, p. 681; am. 2001, ch. 72, § 2, p. 151; am. 2003, ch. 312, § 1, p. 855; am. 2006, ch. 159, § 2, p. 477; am. 2011, ch. 276, § 1, p. 749; am. 2012, ch. 320, § 1, p. 875.

STATUTORY NOTES

Cross References.

Idaho horse board, § 25-2501 et seq.
Public school income fund, § 33-903.

Amendments.

The 2006 amendment, by ch. 159, substituted “this chapter” for “this act” in subsections (1) and (3); in subsection (2), deleted the

subsection (a) designation, deleted “have annually conducted live race meets in the state of Idaho during the preceding two (2) calendar years, and” following “license shall” in the third sentence, added the next-to-the-last sentence, and deleted paragraphs (b) and (c), which formerly read: “(b) In addition to the restrictions recited in paragraph (a) of this

subsection, live horse race licensees that have had a total race handle from both live races and simulcast races exceeding five million dollars (\$5,000,000) during the last calendar year in operation shall not have a license authorizing simulcasting and/or televised races issued or renewed if the licensee has not run in the calendar year immediately preceding the year for which the application for a license is being made for at least ninety percent (90%) of the number of live race days that were conducted by that licensee in 1989.

“(c) The commission may issue a license authorizing simulcast and/or televised races to a live horse race licensee only after that licensee has conducted at that facility a minimum of forty (40) live horse races in each of the two (2) calendar years preceding the application for such license. The requirements of this paragraph are only applicable to live horse race licensees who have received their initial live horse race license after April 1, 1997”;

in subsection (5), deleted “but not later than December 31” from the end of the seventh sentence; in the eighth sentence, inserted “to be deposited directly into the horsemen’s purse account”, substituted “thirty percent (30%)” for “forty percent (40%)”, and added “and ten percent (10%) for track operating expenses at the live tracks with distribution weighted on the number of race days”; and added “All moneys in the track operating accounts are hereby continuously appropriated to the commission for payment as required by this section.”

The 2011 amendment, by ch. 276, inserted subsections (3) through (7) and renumbered former subsections (3) through (7) as present subsections (8) through (12).

The 2012 amendment, by ch. 320, in subsection (10), substituted “a felony” for “illegal” in the fifth sentence and inserted the sixth sentence; added subsection (12); and renumbered former subsection (12) as subsection (13).

Compiler’s Notes.

The bracketed insertion near the end of subsection (2) was added by the compiler to correct the name of the referenced agency.

The bracketed insertion in paragraph (3)(b) was added by the compiler to supply the full name of the referenced fund.

The bracketed insertions in subsection (10) were added by the compiler to correct the names of the referenced accounts. See § 54-2513.

Effective Dates.

Section 2 of S.L. 1986, ch. 69 declared an emergency. Approved March 24, 1986.

Section 2 of S.L. 1990, ch. 374 declared an emergency. Approved April 10, 1990.

Section 3 of S.L. 1997, ch. 351 declared an emergency and provided that the act should be in effect on and after April 1, 1997. Approved March 24, 1997.

Section 3 of S.L. 2001, ch. 72 declared an emergency. Approved March 22, 2001.

Section 2 of S.L. 2003, ch. 312 declared an emergency. Approved April 23, 2003.

Section 3 of S.L. 2006, ch. 159 declared an emergency. Approved March 22, 2006.

JUDICIAL DECISIONS

Lottery Defined.

This chapter is not in contravention of Idaho Const., Art. III, § 20, inasmuch as the pari-mutuel system of wagering on horse racing meets, as provided herein, is not one

solely based on chance, which constitutes an essential requisite of a lottery. *Oneida County Fair Bd. v. Smylie*, 86 Idaho 341, 386 P.2d 374 (1963).

54-2513. Horse racing — Distributions of deposits — Breakage. —

(A) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle in excess of one hundred thousand dollars (\$100,000) shall distribute all sums deposited in any pool as follows:

- (1) Eighty-two percent (82%) of any win, place or show pool to the winner thereof, and eighteen percent (18%) to the licensee;
- (2) Seventy-seven and one-quarter percent (77.25%) of all two (2) horse exotic wagers including, but not limited to, daily doubles and quinellas to the winner thereof, three-quarters of one percent (.75%) to the [Idaho state] racing commission for deposit in the racing commission account, and twenty-two percent (22%) to the licensee;
- (3) Seventy-five and one-quarter percent (75.25%) of all three (3) or more

horse exotic wagers including, but not limited to, trifecta and twin-trifecta to the winner thereof, three-quarters of one percent (.75%) to the [Idaho state] racing commission for deposit in the racing commission account, and twenty-four percent (24%) to the licensee.

(B) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle in excess of one hundred thousand dollars (\$100,000) shall retain the sums deposited in any pool as required in subsection (A) of this section, for distribution and payment based upon gross daily receipts as follows:

(1) One and one-quarter percent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission, for deposit in the racing commission account, which is hereby created in the state regulatory fund.

(2) One-half of one percent (.50%) of gross daily receipts from horse races, separately stated, shall be paid to the Idaho state racing commission for deposit in the track distribution account, which is hereby created in the pari-mutuel distribution fund, for further distribution to certain Idaho horse race tracks, defined as follows:

a. Recipient horse racing tracks shall be those which, during the race meet year of distribution, have a total race handle from both live races and simulcast races of less than five million dollars (\$5,000,000);

b. Distributions to recipient horse racing tracks shall be weighted proportionately on the number of days raced during the year of distribution.

All moneys in the track distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to horse racing tracks shall be made annually but not later than December 15.

(3) One-half of one percent (.50%) of gross daily receipts from horse races, separately stated shall be paid by the licensee to the commission for deposit in the breed distribution account, which is hereby created in the pari-mutuel distribution fund, for payment by the commission in proportion to the handle generated by each horse breed, to lawfully constituted representatives of each horse breed, to benefit owners and/or breeders of Idaho bred racing thoroughbreds, racing quarter horses, racing Appaloosas, racing paints and racing Arabians, subject to the approval of the commission. Moneys in the breed distribution account on December 31 of each year which have not been distributed by the commission shall be paid to the public school income fund.

All moneys in the breed distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to representatives shall be made quarterly.

(4) From the balance of gross daily receipts remaining with the licensee after the distributions required in subsection (B)(1), (2) and (3) of this section from horse races, the following amounts shall be paid or retained:

a. From the first \$20,000 of gross daily receipts, the licensee shall retain the entire amount;

b. From the next \$10,000 of gross daily receipts (gross daily receipts between \$20,000 and \$30,000), the public school income fund and the

equine education account shall each receive one-eighth of one percent (.125%), and the licensee shall retain the balance;

c. From the next \$10,000 of gross daily receipts (gross daily receipts between \$30,000 and \$40,000), the public school income fund and the equine education account shall each receive sixty-two and one-half hundredths percent (.625%), and the licensee shall retain the balance;

d. From all amounts of over \$40,000 of gross daily receipts, the public school income fund and the equine education account shall each receive one and one-eighth percent (1.125%), and the licensee shall retain the balance.

The public schools' and the equine education account's share shall be paid by the licensee to the [Idaho state] racing commission for deposit in the public school income fund or the equine education account as appropriate. The licensee's percentage shall be retained by the licensee.

(C) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle of one hundred thousand dollars (\$100,000) or less shall distribute all sums deposited in any pool as follows:

(1) Seventy-seven percent (77%) of any win, place or show pool to the winner thereof, and twenty-three percent (23%) to the licensee;

(2) Seventy-six and one-quarter percent (76.25%) of all other pools to the winner thereof, three-quarters of one percent (.75%) to the [Idaho state] racing commission for deposit in the racing [commission] account, and twenty-three percent (23%) to the licensee.

(D) Each licensee conducting the pari-mutuel system for live and simulcast horse races shall retain twenty-three percent (23%) of all sums deposited in any pool, for distribution and payment based upon gross daily receipts as follows:

(1) One and one-quarter percent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission, for deposit in the racing commission account.

(2) One-half of one percent (.50%) of gross daily receipts from horse races, separately stated, shall be paid to the Idaho state racing commission for deposit in the track distribution account, for further distribution to certain Idaho horse race tracks, defined as follows:

a. Recipient horse racing tracks shall be those which, during the race meet year of distribution, have a total race handle from both live races and simulcast races of less than five million dollars (\$5,000,000);

b. Distributions to recipient horse racing tracks shall be weighted proportionately on the number of days raced during the year of distribution.

All moneys in the track distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to horse racing tracks shall be made annually but not later than December 15.

(3) One-half of one percent (.50%) of gross daily receipts from horse races, separately stated shall be paid by the licensee to the commission for deposit in the breed distribution account, for payment by the commission

in proportion to the handle generated by each horse breed, to lawfully constituted representatives of each horse breed, to benefit owners and/or breeders of Idaho bred racing thoroughbreds, racing quarter horses, racing Appaloosas, racing paints and racing Arabians, subject to the approval of the commission. Moneys in the breed distribution account on December 31 of each year which have not been distributed by the commission shall be paid to the public school income fund. All moneys in the breed distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to representatives shall be made quarterly.

(4) Twenty and three-quarters percent (20.75%) of gross daily receipts from horse races shall be paid or retained as follows:

- a. From the first \$20,000 of gross daily receipts, the licensee shall retain twenty and three-quarters percent (20.75%);
- b. From the next \$10,000 of gross daily receipts (gross daily receipts between \$20,000 and \$30,000), the public school income fund and the equine education account shall each receive one-eighth of one percent (.125%), and the licensee shall retain twenty and one-half percent (20.50%);
- c. From the next \$10,000 of gross daily receipts (gross daily receipts between \$30,000 and \$40,000), the public school income fund and the equine education account shall each receive sixty-two and one-half hundredths percent (.625%), and the licensee shall retain nineteen and one-half percent (19.50%);
- d. From all amounts of over \$40,000 of gross daily receipts, the public school income fund and the equine education account shall each receive one and one-eighth percent (1.125%), and the licensee shall retain eighteen and one-half percent (18.50%).

The public schools' share and the equine education account's share shall be paid by the licensee to the [Idaho state] racing commission for deposit in the public school income fund or the equine education account as appropriate. The licensee's percentage shall be retained by the licensee.

(E) Each licensee may retain the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of ten (10), known as breakage, and the total amount of unclaimed tickets at the termination of the time allowed by rule of the commission.

(F) If the fiscal year-end balance in the racing commission account exceeds \$400,000, the excess shall be transferred by the office of the state controller to the pari-mutuel distribution fund, which is hereby created, for further distribution as follows:

(1) Sixty percent (60%) shall be deposited in the Idaho horse owner/breeder award account, which is hereby created in the pari-mutuel distribution fund, and shall be distributed by the [Idaho state] racing commission annually, but not later than December 15 of each year as follows:

- a. Fifty percent (50%) to the breeders of Idaho bred winners based on the number of live races by each breed for the current calendar year; and

b. Fifty percent (50%) in equal amounts to owners of Idaho bred horse race winners.

c. All moneys in the Idaho [horse] owner/breeder award account are hereby continuously appropriated to the commission for payment as required in this section.

(2) Forty percent (40%) shall be deposited in the track purse enhancement account, which is hereby created, and paid to all Idaho licensed horse racetracks for the purpose of purse enhancement based on the number of live race dates held the preceding calendar year. Track purse enhancement moneys shall be disbursed no later than thirty (30) days after Idaho state racing commission approval of live race meet license applications for the forthcoming calendar year. All moneys in the track purse enhancement account are hereby continuously appropriated to the commission for payment as required by this section.

History.

1969, ch. 221, § 4, p. 724; am. 1974, ch. 96, § 2, p. 1196; am. 1977, ch. 73, § 1, p. 142; am. 1980, ch. 123, § 2, p. 278; am. 1983, ch. 205, § 1, p. 557; am. 1985, ch. 194, § 2, p. 494; am. 1987, ch. 282, § 1, p. 592; am. 1987, ch. 316, § 5, p. 660; am. 1988, ch. 141, § 3, p. 256; am.

1990, ch. 241, § 1, p. 688; am. 1990, ch. 399, § 1, p. 1116; am. 1992, ch. 19, § 3, p. 55; am. 1992, ch. 77, § 1, p. 214; am. 1996, ch. 380, § 4, p. 1287; am. 1997, ch. 353, § 1, p. 1041; am. 1998, ch. 127, § 1, p. 474; am. 2000, ch. 245, § 2, p. 681.

STATUTORY NOTES

Cross References.

Equine education account § 57-818.

Public school income fund, § 33-903.

State controller, § 67-1001 et seq.

Prior Laws.

Former § 54-2513, which comprised S.L. 1963, ch. 64, § 13, p. 246 was repealed by S.L. 1969, ch. 221, § 7.

Compiler's Notes.

The six bracketed insertions of "[Idaho state]" in this section were added by the compiler to correct the name of the referenced agency.

The bracketed insertion in paragraph (C)(2) was added by the compiler to supply the full name of the referenced fund.

The bracketed insertion in paragraph (F)(1)(c) was added by the compiler to correct the name of the referenced account.

The words in parentheses so appeared in the law as enacted.

Section 3 of S.L. 1985, ch. 194 read: "All distributions of deposits made pursuant to section 54-2513, Idaho Code, as such section existed prior to the effective date of this act, are hereby ratified, confirmed and approved."

Effective Dates.

Section 2 of S.L. 1977, ch. 73 declared an emergency. Approved March 16, 1977.

Section 2 of S.L. 1983, ch. 205 declared an emergency. Approved April 13, 1983.

Section 4 of S.L. 1985, ch. 194 declared an emergency. Approved March 21, 1985.

Section 2 of S.L. 1987, ch. 282 declared an emergency. Approved April 3, 1987.

Section 4 of S.L. 1988, ch. 141 declared an emergency. Approved March 23, 1988.

Section 2 of S.L. 1990, ch. 241 declared an emergency. Approved April 5, 1990.

Section 3 of S.L. 1990, ch. 399 provided that the act would become effective July 1, 1991.

Section 8 of S.L. 1992, ch. 19 read: "(1) An emergency existing therefore, which emergency is hereby declared to exist, those portions of section 54-2513(D)(4), Idaho Code as amended by this act which effect the distribution of revenues to the equine education account, shall be in full force and effect after passage and approval, and retroactively to July 1, 1991.

"(2) An emergency existing therefore, which emergency is hereby declared to exist, the balance of this act shall be in full force and effect on and after its passage and approval." Approved March 6, 1992.

Section 2 of S.L. 1992, ch. 77 declared an emergency. Approved March 26, 1992.

Section 5 of S.L. 1996, ch. 380 declared an emergency. Approved March 20, 1996.

Section 2 of S.L. 1997, ch. 353 declared an emergency. Approved March 24, 1997.

JUDICIAL DECISIONS

ANALYSIS

Challenge to distributions.
Scheduling of races.

Challenge to Distributions.

Where plaintiffs did not object to the use of public funds to provide racing facilities for horses, but only objected because they, as quarterhorse owners, did not receive a greater portion of the moneys, but where the quarterhorse owners were also private individuals and if the current practice of distributing funds in the form of purses and statutory percentages was void as to thoroughbred breeders and owners, it would likewise be unconstitutional as to quarterhorse owners and breeders, the remedy sought by the quarterhorse owners would not rectify the alleged unconstitutional usage of public funds and the allegation was without merit. *Idaho Quarterhorse Breeders Ass'n v. Ada County Fair Bd.*, 101 Idaho 339, 612 P.2d 1186 (1980).

Scheduling of Races.

Where the record indicated that if more quarterhorse races were held at better positions on the daily card, the reasoned judgment of the park officials was that the quality of competing horses and, thus, the quality of races would drop and the pari-mutuel handle generated would decrease, and in turn, there would be a decrease in moneys generated for the public schools, there was a sufficient rational basis to sustain the constitutionality of the actions of the officials in scheduling fewer quarterhorse races. *Idaho Quarterhorse Breeders Ass'n v. Ada County Fair Bd.*, 101 Idaho 339, 612 P.2d 1186 (1980).

54-2514. Dog racing — Distribution of deposits — Breakage. —

(1) Each licensee conducting the pari-mutuel system for simulcast or televised dog races shall distribute all sums deposited in any pool as follows:

(a) Seventy-nine and one-half percent (79.5%) of any win, place or show pool to the winner thereof, and twenty and one-half percent (20.5%) to the licensee;

(b) Seventy-seven percent (77%) of all two (2) dog exotic wagers including, but not limited to, daily doubles and quinellas to the winner thereof, and twenty-three percent (23%) to the licensee;

(c) Seventy-five percent (75%) of all three (3) or more dog exotic wagers including, but not limited to, trifecta, twin trifecta, pick three, pick six and superfecta, to the winner thereof, and twenty-five percent (25%) to the licensee.

(2) Each licensee conducting the pari-mutuel system for simulcast or televised dog races shall retain the sums deposited in any pool as required in subsection (1) of this section, for distribution and payment based upon gross daily receipts as follows:

(a) One and one-quarter percent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission for deposit in the racing commission account.

(b) One percent (1%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission for payment to the county in which the dog racing facility is located. The board of county commissioners shall spend such revenues only for visitor promotion.

(c) One-half percent (.5%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission for deposit in the Idaho horse breeders' and owners' award account in the state treasury for further distribution as follows:

(i) Fifty percent (50%) of all moneys deposited in the Idaho horse

breeders' and owners' award account shall be distributed by the [Idaho state] racing commission annually but not later than December 15, to the breeders of Idaho bred winners of each approved horse race in Idaho in proportion to the handle generated by each breed; and

(ii) Fifty percent (50%) of all moneys deposited in the Idaho horse breeders' and owners' award account shall be distributed by the [Idaho state] racing commission annually but not later than December 15, in equal amounts to owners of Idaho bred horse race winners.

(d) From the balance of gross daily receipts remaining with the licensee after the distributions required in subsections (1)(a), (b) and (c) of this section from simulcast or televised dog races, the following amounts shall be paid or retained:

(i) From the first twenty thousand dollars (\$20,000) of gross daily receipts, the licensee shall retain the entire amount;

(ii) From the next ten thousand dollars (\$10,000) of gross daily receipts, (gross daily receipts between twenty thousand dollars (\$20,000) and thirty thousand dollars (\$30,000)) the public school income fund shall receive one-quarter of one percent (.25%) and the licensee shall retain the balance;

(iii) From the next ten thousand dollars (\$10,000) of gross daily receipts (gross daily receipts between thirty thousand dollars (\$30,000) and forty thousand dollars (\$40,000)) the public school income fund shall receive one and one-quarter percent (1.25%) and the licensee shall retain the balance;

(iv) From all amounts of over forty thousand dollars (\$40,000) of gross daily receipts, the public school income fund shall receive two and one-quarter percent (2.25%) and the licensee shall retain the balance.

(3) Each licensee may retain the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of ten (10), known as breakage, and the total amount of unclaimed tickets at the termination of the time allowed by rule of the commission.

History.

I.C., § 54-2514, as added by 1994, ch. 325,

§ 2, p. 1044; am. 1996, ch. 310, § 2, p. 1016; am. 1999, ch. 394, § 1, p. 1092.

STATUTORY NOTES**Cross References.**

Racing commission account, § 54-2513.

Idaho horse breeders' and owners' account, § 54-2513.

Public school income fund, § 33-903.

Prior Laws.

Former § 54-2514, which comprised I.C., § 54-2514, as added by 1992, ch. 19, § 4, p. 55, was repealed by S.L. 1994, ch. 325, § 1, effective May 1, 1994.

Another former § 54-2514, which comprised S.L. 1963, ch. 64, § 14, p. 246 was repealed by S.L. 1969, ch. 221, § 7.

Compiler's Notes.

Former § 54-2514, as enacted by S.L. 1969, ch. 321, § 5, was amended and redesignated as § 54-2515.

The bracketed insertions in paragraphs (2)(c)(i) and (ii) were added by the compiler to correct the name of the referenced agency.

Effective Dates.

Section 3 of S.L. 1994, ch. 325 declared an emergency and provided this act shall be in full force and effect on and after May 1, 1994.

Section 3 of S.L. 1996, ch. 310 declared an emergency. Approved March 18, 1996.

54-2514A. Dog racing illegal after the effective date of this act. —

On and after the effective date of this act, live dog races and pari-mutuel betting on such races or the training of dogs to compete in live dog races shall be illegal in the state of Idaho. Notwithstanding any other provision of law to the contrary, the provisions of this section shall not be deemed to alter or affect simulcasts and simulcast pari-mutuel wagering at a facility that was licensed and authorized prior to January 1, 1996, to conduct live dog races and pari-mutuel wagering on them prior to the effective date of this act, and horse and dog race simulcasts and pari-mutuel wagering on such simulcasts may be conducted at that facility, or at an alternate facility in the same county and approved by the commission as if the facility were still licensed and under the same conditions and restrictions imposed by law on a licensee. Under no circumstances shall the provisions of this section or section 54-2512, Idaho Code, be used to grant more than one (1) license to conduct simulcast pari-mutuel wagering in any county. Any person participating or conducting a live dog race or pari-mutuel betting on such a live dog race or the training of dogs to compete in live dog races in violation of this section shall be guilty of a felony.

History.

I.C., § 54-2514A, as added by 1996, ch. 310,

§ 1, p. 1016; am. 1999, ch. 394, § 2, p. 1092;
am. 2005, ch. 222, § 1, p. 698.

STATUTORY NOTES**Cross References.**

Punishment for felony where punishment not prescribed § 18-112.

section heading and the section text were added by S.L. 1996, chapter 310, which was effective March 18, 1996.

Compiler's Notes.

The words "effective date of this act" in the

54-2515. Exemption from fee payment — Payment of sums due commission — Payment to public school income fund. — Fair boards or fair districts which conduct race meets in connection with regularly scheduled annual fairs shall be exempt from payment of the fees provided in section 54-2508, Idaho Code. All sums due the commission from the licensee shall be paid to and retained by the commission for the payment of salaries, travel, operating costs and any other expenses necessary to carry out the provisions of this act, except that no payment need be made for office accommodations furnished by the state: provided, however, that no salary, wages, expenses or compensation of any kind shall be paid by the state of Idaho for, or in connection with, the work of the commission in carrying out the provisions of this act. All sums due the public school income fund shall be collected by the commission, and, on the next business day following the receipt thereof, shall be paid to the state treasurer for deposit in the public school income fund of the state treasury.

History.

1969, ch. 221, § 5, p. 724; am. 1980, ch. 123,

§ 3, p. 278; am. and redesign. 1992, ch. 19, § 5, p. 55.

STATUTORY NOTES

Cross References.

Public school income fund, § 33-903.
State treasurer, § 67-1201 et seq.

Compiler's Notes.

This section was formerly compiled as § 54-2514 and was amended and redesignated as § 54-2515 by § 5 of S.L. 1992, ch. 19.
Former § 54-2515, as enacted by S.L. 1963,

ch. 64, § 15, was amended and redesignated as § 54-2516.

The words "this act" were added by S.L. 1969, chapter 221, which is codified as §§ 54-2502 to 54-2513, 54-2515, and 54-2517.

Effective Dates.

Section 4 of S.L. 1980, ch. 123 declared an emergency. Approved March 21, 1980.

54-2516. Licensee's right to withhold deposits. — (1) In the event any government or governmental agency imposes a levy on a licensee, by a special tax on the money so deposited under the pari-mutuel system, or upon or against his receipts therefrom, the said licensee may withhold in addition to the aforesaid per centum and breakage, as provided in section 54-2513 or section 54-2514, Idaho Code, the amount of the tax so levied.

(2) Breakage for interstate combined wagering pools shall be calculated in accordance with the statutes or rules of the host jurisdiction, and must be distributed among the participating jurisdictions in a manner agreed to among the jurisdictions.

History.

1963, ch. 64, § 15, p. 246; am. 1991, ch. 56,

§ 4, p. 106; am. and redesign. 1992, ch. 19, § 6, p. 55.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-2515 and was amended and redesignated as § 54-2516 by § 6 of S.L. 1992, ch. 19.

Former § 54-2516 was amended and redesignated as § 54-2517.

Effective Dates.

Section 5 of S.L. 1991, ch. 56, declared an emergency. Approved March 20, 1991.

54-2517. Bond requirement. — Every race meet licensee shall provide and deliver to the commission a bond signed by a surety company licensed to do business in this state in such form and in the sum as may be required by the commission, and conditioned that said licensee will pay to the state of Idaho all moneys due the state under the provisions of this act.

History.

1963, ch. 64, § 16, p. 246; am. 1969, ch. 221,

§ 6, p. 724; am. and redesign. 1992, ch. 19, § 7, p. 55.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-2516 and was amended and redesignated as § 54-2517 by § 7 of S.L. 1992, ch. 19.

The words "this act" refer to S.L. 1963, ch. 64, which is compiled as §§ 54-2501 to 54-2512, 54-2516, and 54-2517.

Section 17 of S.L. 1963, ch. 65, read: "If any portion of this Act shall be declared unconstitutional, it shall not affect the validity of this

Act as a whole or any part thereof not adjudged unconstitutional."

Effective Dates.

Section 19 of S.L. 1963, ch. 64 declared an emergency. Passed over governor's veto, March 5, 1963.

Section 8 of S.L. 1992, ch. 19 read: "(1) An emergency existing therefore, which emergency is hereby declared to exist, those por-

tions of section 54-2513(D)(4), Idaho Code, as amended by this act which effect the distribution of revenues to the equine education account, shall be in full force and effect on and after passage and approval, and retroactively to July 1, 1991.

“(2) An emergency existing therefore, which emergency is hereby declared to exist, the balance of this act shall be in full force and effect on and after its passage and approval.”
Approved March 6, 1992.

CHAPTER 26

PLUMBING AND PLUMBERS

SECTION.

- 54-2601. Declaration of policy and purpose of act — Idaho state plumbing code.
- 54-2602. Exceptions.
- 54-2603. Plumbing.
- 54-2604. Plumbing systems.
- 54-2605. Idaho plumbing board.
- 54-2606. Powers and duties of the Idaho plumbing board.
- 54-2607. Administrator of the division of building safety — Powers and duties.
- 54-2608. Revocation of certificates of competency — Suspension — Refusal to renew.
- 54-2609. Character of examination — Certification.
- 54-2610. Certificate a prerequisite.
- 54-2611. Classification of competency.
- 54-2612. Examinations — Time and place — Notification.
- 54-2613. Application for examination.
- 54-2614. Application and registration fees.
- 54-2614A. Apprentice and specialty apprentice registration and renewal.
- 54-2615. Certificate of competency.
- 54-2616. Fees for certificates — Prorating.

SECTION.

- 54-2617. Certificate expiration — Renewal — Rules for staggered schedule.
- 54-2618. Certificate to be displayed and certificates of competency and registration carried or in vicinity of work site.
- 54-2619. Municipal fees for permits, inspections — Exceptions.
- 54-2620. Permits required — Exceptions.
- 54-2621. Work not requiring permits.
- 54-2622. Permits — Application — Requirements.
- 54-2622A. Inspections of modular buildings — When authorized — Approval and certification.
- 54-2623. Fee — Permit — Inspection.
- 54-2624. Inspection by agent — Tests.
- 54-2625. Approval and certification of inspection.
- 54-2626. Notification for inspection — Fee for reinspection.
- 54-2627. Appointment of inspectors — Qualifications — Unlawful practices.
- 54-2628. Violation — Misdemeanor.
- 54-2629. Attorney general — Prosecuting attorneys.
- 54-2630. Plumbing board fund created.

54-2601. Declaration of policy and purpose of act — Idaho state plumbing code. — (1) The purpose of this act is to provide certain minimum standards and requirements for the use of and the design, construction, installation, improvement, extension and alteration of materials, piping, venting, fixtures, appliances and appurtenances in relation to plumbing and plumbing systems hereinafter defined, and to provide that all plumbing and plumbing systems in the state shall be designed, constructed, installed, improved, extended and altered in substantial accord with the uniform plumbing code published by the international association of plumbing and mechanical officials, and as it shall be amended, revised, compiled and published from time to time and as subsequent editions, amendments or revisions thereto shall be adopted by the Idaho plumbing board through the negotiated rulemaking process. Any amendments, revisions or modifications made to the uniform plumbing code by the board shall be made by administrative rules promulgated by the board. The uniform plumbing code together with any amendments, revisions or modifications made by the board shall collectively constitute and be named the Idaho state plumbing

code. The board shall conduct a minimum of two (2) public hearings with notice of such public hearings provided in accordance with the provisions of section 67-2343, Idaho Code.

(2) Cities electing to implement a plumbing code enforcement program shall do so only in compliance with the provisions of this section. Cities may elect to implement a plumbing enforcement program by passing an ordinance evidencing the intent to do so. Cities that perform plumbing code enforcement activities shall, except as provided in subsection (3) of this section, by ordinance adopt the uniform plumbing code together with any amendments thereto made by the board, which shall collectively constitute and be named the Idaho state plumbing code. The effective date of any edition of the code adopted by the board shall be January 1 of the year following its adoption.

(3) Cities may further amend the Idaho state plumbing code adopted by the board in conformance with this section to address local concerns provided that such amendments prescribe at least an equivalent level of protection to that contained in the uniform plumbing code. Provided however, that no code other than the uniform plumbing code together with any amendments, revisions or modifications made by the board which collectively constitute the Idaho state plumbing code may serve as the minimum standard for plumbing installations in such city. A city electing to amend the Idaho state plumbing code as adopted by the board may do so only after a finding by the city that good cause exists for such an amendment and that such amendment is reasonably necessary. Prior to making a finding of good cause for such an amendment, the city shall conduct a public hearing. Notice of the time and place of the public hearing shall be published in the official newspaper or paper of general circulation within the city. Written notice of such public hearing and the text of the proposed amendment shall be given by the city to the board not less than thirty (30) days prior to such hearing.

(4) The remaining provisions of this act shall not apply, except as hereinafter provided, to cities if such cities enact ordinances or codes prescribing the Idaho state plumbing code and amendments it may make thereto in accordance with this section for all plumbing installations which shall be considered the equal minimum standards, and requirements including the enforcement thereof as provided by this act.

History.

1957, ch. 214, § 1, p. 454; am. 1963, ch. 138, § 1, p. 392; am. 1975, ch. 120, § 1, p. 250; am.

and redesign. 1984, ch. 123, § 1, p. 281; am. 2012, ch. 53, § 1, p. 151.

STATUTORY NOTES**Cross References.**

Idaho plumbing board, § 54-2605.

Prior Laws.

Former §§ 54-2601 — 54-2620 which comprised S.L. 1965, ch. 107, §§ 1-20, p. 201, were repealed by S.L. 1967, ch. 140, § 1.

Amendments.

The 2012 amendment, by ch. 53, inserted "Idaho state plumbing code" in the section heading and rewrote the section, which formerly read: "The purpose of this act is to provide certain minimum standards and requirements for the use of and the design,

construction, installation, improvement, extension and alteration of materials, piping, venting, fixtures, appliances and appurtenances in relation to plumbing and plumbing systems hereinafter defined, and to provide that all plumbing and plumbing systems shall be designed, constructed, installed, improved, extended and altered in substantial accord with the Uniform Plumbing Code published by the International Association of Plumbing and Mechanical Officials, and as it shall be amended, revised, compiled and published from time to time and as such amendments or revisions shall be adopted by the Idaho plumbing board; provided that the provisions of this act shall not apply, except as hereinafter provided, to cities if such cities have or enact ordinances or codes prescribing the equal minimum standards and requirements

including the enforcement thereof as provided by this act".

Compiler's Notes.

This section was formerly compiled as § 39-2701 and was amended and redesignated as § 54-2601 by S.L. 1984, ch. 123, § 1.

The term "this act" refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

For more on the international association of plumbing and mechanical officials, see <http://www.iapmo.org>.

The uniform plumbing code is a publication of the international association of plumbing and mechanical officials. See <http://www.iapmo.org>.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 1, 2, 45 to 47.

54-2602. Exceptions. — (1) Certificate of competency requirements of this chapter shall not be deemed to apply to:

(a) Any person who does plumbing work in a single or duplex family dwelling, including accessory buildings, quarters and grounds in connection with such dwelling; provided that such person owns or is a contract purchaser of the premises, and provided further that such person shall comply with the minimum standards and rules applicable to plumbing practices provided by this chapter.

(b) Farm buildings located outside the incorporated limits of any city unless such buildings are connected to a public water or sewer system; and a farm building is hereby defined to be a structure located on agricultural zoned property and designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products and includes sheds, barns, corrals or fences. This definition does not include a place for human habitation or a place of regular employment where agricultural products are extracted, processed, treated or packaged; a place used by the public; or conditioned livestock housing.

(c) Logging, mining or construction camps when plumbing installations are made to conform with the recommendations of the department of health and welfare.

(d) Piping systems in industrial processing plants located outside the incorporated limits of any city unless such systems are connected to a public water or sewer system.

(e) Work on plumbing systems on premises owned or operated by an employer who regularly employs maintenance or construction plumbers, provided that alterations, extensions and new construction shall comply with the minimum standards and rules applicable to plumbing practices provided by this chapter.

(f) Nothing contained in this section or any other provision of this code

shall be construed or applied to require a sewer contractor, sewage disposal contractor, or any excavating or utility contractor who generally engages in the business of installing, altering or repairing sewers, private and public sewage disposal systems, and water distribution and/or drainage lines outside the foundation walls of any building or structure, to obtain a valid contractor's certificate of competency or to employ only journeymen plumbers possessing a valid journeyman plumber's certificate of competency or registration, or to in any way require that his employees be registered, licensed or declared competent by the board.

(g) Water treatment installations and repairs when installed in residential or business properties, provided the same when installed, repaired or completed, shall be inspected by a designated, qualified and properly identified agent of the division of building safety as to quality of workmanship and compliance with the applicable provisions of this chapter.

(h) Plumbing work within modular buildings as defined in section 39-4301, Idaho Code, that are constructed in the state of Idaho for installation on building sites outside the state; provided however, that no modular building shall be installed on a building site in the state of Idaho until it has been approved and bears the insignia of approval of the division as being in compliance with the requirements set forth in section 39-4304, Idaho Code.

(i) Individuals licensed pursuant to chapter 10, title 54, Idaho Code, or chapter 50, title 54, Idaho Code, as follows:

(i) Individuals holding a current HVAC or electrical license may install electrical circuitry from the disconnecting means to a water heater and electrical connections to the water heater as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the water heater is no more than fifty (50) feet long.

(ii) Individuals holding a current HVAC license may install gas piping and piping for hydronic systems.

(iii) Individuals holding a current HVAC license may install boilers that are not otherwise subject to inspection by the industrial commission or its authorized agent.

(2) To the extent that an electrical or HVAC installation permit issued by the Idaho division of building safety includes any part of a plumbing installation, the permit issued and inspection performed shall be sufficient to satisfy the permitting and inspecting requirements of this chapter if all required permit fees have been paid.

(3) Any person, firm, copartnership, association or corporation making water treatment installations and/or repairs in accordance with the provisions of this chapter shall maintain a surety bond in the amount of two thousand dollars (\$2,000).

History.

1957, ch. 214, § 2, p. 454; am. 1963, ch. 138, § 2, p. 392; am. 1969, ch. 184, § 1, p. 548; am. 1974, ch. 39, § 25, p. 1023; am. 1975, ch. 173, § 1, p. 467; am. and redesisg. 1984, ch. 123,

§ 2, p. 281; am. 1996, ch. 421, § 51, p. 1406; am. 2004, ch. 250, § 7, p. 715; am. 2007, ch. 197, § 2, p. 597; am. 2007, ch. 252, § 9, p. 737; am. 2008, ch. 381, § 1, p. 1051.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Division of building safety, § 67-2601A.

Industrial commission safety rules, §§ 72-721 to 72-723.

Prior Laws.

Former § 54-2602 was repealed. See Prior Laws, § 54-2601.

Amendments.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 197, designated the introductory language as subsection (1); added subsections (1)(i) and (2); and added the subsection (3) designation, and therein substituted "chapter" for "act."

The 2007 amendment, by ch. 252, updated the section references in subsection (h).

The 2008 amendment, by ch. 381, in para-

graph (1)(b), inserted "building," substituted "a structure located on agricultural zoned property and designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products and includes sheds, barns, corrals or fences" for "an agricultural unit on which the owner or occupant resides and from which the owner or occupant derives his principal income and livelihood," and added the last sentence; deleted former paragraph (1)(g), relating to water treatment installations and repairs; and redesignated former paragraphs (1)(h) and (1)(i) as present paragraphs (1)(g) and (1)(h).

Compiler's Notes.

This section was formerly compiled as § 39-2702 and was amended and redesignated as § 54-2602 by S.L. 1984, ch. 123, § 2.

Effective Dates.

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

OPINIONS OF ATTORNEY GENERAL

The plumbing division of the state department of labor and industrial services [now plumbing board in division of building safety] has authority to issue plumbing permits to nonlicensed individuals or firms other than those identified in this section, when neces-

sary to protect the public health and safety; the process for issuing such permits is within the discretionary powers of the plumbing board as the board shall establish by exercise of its rulemaking powers. OAG 86-8.

54-2603. Plumbing. — Plumbing means and includes the business, trade practice or work, materials and fixtures used in the design, construction, installation, improvement, extension and alteration of all piping, fixtures, appliances and appurtenances in connection with any plumbing system.

History.

1957, ch. 214, § 3, p. 454; am. and redesign. 1984, ch. 123, § 3, p. 281.

STATUTORY NOTES

Prior Laws.

Former § 54-2603 was repealed. See Prior Laws, § 54-2601.

2703 and was amended and redesignated as § 54-2603 by S.L. 1984, ch. 123, § 3.

Compiler's Notes.

This section was formerly compiled as § 39-

54-2604. Plumbing systems. — (1) A plumbing system, public or private, means and includes:

- (a) Plumbing fixtures, interconnecting system pipes and traps;
- (b) Soil, waste and vent pipes;
- (c) Building drains and building sewers;

- (d) Sanitary and storm water drainage facilities;
- (e) Liquid waste and sewerage facilities;
- (f) Water supply systems and distribution and disposal pipes of any premises;
- (g) Water treating and water using equipment attached to a plumbing system except for water conditioning equipment;
- (h) All the respective connections, devices and appurtenances of any plumbing system, public or private, within or adjacent to any building, residence, manufactured housing, or structure to and including a connection with any point of a public or private supply, distribution or disposal system or other acceptable terminal; and
- (i) Water heaters and all associated venting dedicated exclusively thereto.

(2) As used in this section, "water conditioning equipment" shall mean those devices necessary to remove impurities and sediment from water.

(3) A plumbing system does not include a single service integrated fire sprinkler system as defined in section 41-254, Idaho Code.

(4) It shall be unlawful for any person, firm, copartnership, association or corporation to do, or cause to be done, whether acting as a principal, agent, or employee, any construction, installation, improvement, extension or alteration of any plumbing system or water conditioning equipment in any residence, building, or structure, or service lines thereto, in the state of Idaho, without complying with the bonding provisions as provided by section 54-2602, Idaho Code.

History.

1957, ch. 214, § 4, p. 454; am. 1983, ch. 238, § 1, p. 643; am. and redesign. 1984, ch. 123,

§ 4, p. 281; am. 1988, ch. 30, § 1, p. 38; am. 1993, ch. 128, § 1, p. 322; am. 2010, ch. 109, § 1, p. 221.

STATUTORY NOTES

Prior Laws.

Former § 54-2604 was repealed. See Prior Laws, § 54-2601.

Amendments.

The 2010 amendment, by ch. 109, added paragraph (1)(i).

Compiler's Notes.

This section was formerly compiled as § 39-2704 and was amended and redesignated as § 54-2604 by S.L. 1984, ch. 123, § 4.

54-2605. Idaho plumbing board. — (1) The Idaho plumbing board, referred to as the board, is hereby created and made a part of the division of building safety. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this act; and the board shall make, promulgate and publish such rules as may be necessary for carrying out the provisions of this act in order to effectuate the purposes thereof and for the orderly and efficient administration thereof, and except as may be limited or prohibited by law and the provisions of this act, such rules so made and promulgated shall have the force of statute.

(2) The board shall consist of five (5) members. The members shall be appointed at large by the governor, with power of removal for cause.

Members shall be appointed for a term of three (3) years. Whenever a vacancy occurs the governor shall forthwith appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(3) All members of the board shall be United States citizens, residents of this state for not less than two (2) years, and qualified by knowledge, integrity and experience to properly execute the functions of the board. Two (2) members shall be qualified persons representing the public at large; one (1) member shall be an active plumbing contractor with not less than five (5) years experience in the plumbing contracting business; one (1) member shall be an active plumbing contractor with not less than five (5) years in the plumbing contracting business with an additional background of experience in gas piping installations in buildings; and one (1) member shall be a journeyman plumber. All members of the board shall take, subscribe and file with the secretary of state an oath of office in the form, manner and time prescribed by chapter 4, title 59, Idaho Code.

(4) The board shall meet within thirty (30) days after the appointment of all its members and thereafter at such other times as may be expedient and necessary for the proper performance of its duties. At the board's first meeting, the members shall elect one (1) of their number to be chairman. A majority of the board shall constitute a quorum for the transaction of business and not less than two (2) quorum meetings shall be held each year. The board may delegate to any member, or its chairman or other employees, the power to make investigations and hold hearings at any place it may deem proper, and to report findings to it; and may delegate to its chairman and employees the performance of ministerial functions.

(5) Each member of the board shall be compensated as provided by section 59-509(h), Idaho Code.

History.

1957, ch. 214, § 5, p. 454; am. 1974, ch. 39, § 26, p. 1023; am. and redesign. 1984, ch. 123,

§ 5, p. 281; am. 1986, ch. 306, § 1, p. 757; am. 1996, ch. 421, § 52, p. 1406; am. 2001, ch. 151, § 4, p. 546.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Prior Laws.

Former § 54-2605 was repealed. See Prior Laws, § 54-2601.

Compiler's Notes.

This section was formerly compiled as § 39-2705 and was amended and redesignated as § 54-2605 by S.L. 1984, ch. 123, § 5.

The term "this act" in subsection (1) refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

Section 39 of S.L. 1984, ch. 123 read: "All rules, regulations and fee schedules, which were in place on the effective date of this act by the authority of the director of the department of labor and industrial services, and which authority has been transferred to either the Idaho plumbing board or the Idaho electrical board by the provisions of this act, are hereby continued in full force and effect for not to exceed one hundred and eighty days, or for such shorter period of time as the Idaho plumbing board or the Idaho electrical board need to promulgate and adopt rules, regulations and fee schedules."

54-2606. Powers and duties of the Idaho plumbing board. —

(1) The board shall have the general administration and supervision of the design, construction, installation, improvement, extension and alteration of

plumbing and plumbing systems, except that which has been heretofore and hereinafter exempted from the jurisdiction of this board, in connection with all buildings, residences and structures in this state including buildings, residences and structures owned by the state or any political subdivision thereof.

(2) The division of building safety shall enforce the minimum standards and requirements therefor as provided by this chapter.

(3) The board may exercise such powers and duties as are reasonably necessary to carry out the provisions of this chapter, and it may among other things:

(a) Establish the fees to be charged for permits and inspections of plumbing systems.

(b) Hold public meetings and attend or be represented at such meetings, within or without the state, prepare and publish rules pertaining to this chapter, and such other information as may be necessary, and furnish copies thereof to those engaged in the business, trade, practice or work of plumbing and pipefitting and to the public upon request.

(c) Furnish standards and procedures and prescribe reasonable rules for examinations, qualification and certification of plumbing contractors and journeymen and apprentice plumbers not herein prescribed, including the establishment of continuing education requirements for journeymen and plumbing contractors.

(d) Require the furnishing of a compliance bond by plumbing contractors in an amount not to exceed two thousand dollars (\$2,000) for the contractor classification or evidence of such coverage by a corporate industry group bond acceptable to the board.

(e) Furnish standards and procedures and prescribe reasonable rules to provide for the certification of specialty contractors, specialty journeymen, and specialty apprentices, including the furnishing of a compliance bond in an amount not to exceed two thousand dollars (\$2,000) for the specialty contractor classification or evidence of coverage by a corporate industry group bond acceptable to the board.

(f) Establish by administrative rule civil penalties not to exceed one thousand dollars (\$1,000) for each count or separate offense, to be paid for violations of this chapter and rules of the Idaho plumbing board; and to establish by administrative rule the process by which appeals from the imposition of civil penalties may be heard. The board is authorized to affirm, reject, decrease or increase the penalty imposed; however, the board shall not increase any penalty imposed to an amount exceeding one thousand dollars (\$1,000) for each individual count or separate offense.

History.

1957, ch. 214, § 11, p. 454; am. 1963, ch. 138, § 3, p. 392; am. 1974, ch. 39, § 29, p. 1023; am. and redig. 1984, ch. 123, § 7, p.

281; am. 1995, ch. 253, § 1, p. 828; am. 1996, ch. 421, § 53, p. 1406; am. 2004, ch. 311, § 1, p. 872; am. 2009, ch. 126, § 1, p. 405.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Prior Laws.

Former § 54-2606 was repealed. See Prior Laws, § 54-2601.

Amendments.

The 2009 amendment, by ch. 126, at the end of subsection (3)(c), added “establishment of continuing education requirements for journeymen and plumbing contractors”; and designated the former final phrase in subsection (3)(c) as subsection (3)(d), and therein added “Require the” and inserted “by plumbing contractors,” and made related redesignations.

Compiler's Notes.

This section was formerly compiled as § 39-2711 and was amended and redesignated as § 54-2606 by S.L. 1984, ch. 123, § 7.

Effective Dates.

Section 4 of S.L. 2004, ch. 311 declared an emergency. Approved March 24, 2004.

54-2607. Administrator of the division of building safety — Powers and duties. — (1) The administrator shall exercise such powers and duties as are reasonably necessary to enforce the minimum standards provided in this chapter, and he may among other things:

(a) Prescribe and establish procedures to effectuate the efficient enforcement of this chapter not herein prescribed.

(b) Serve as secretary to the Idaho plumbing board.

(c) Appoint licensed staff inspectors who shall be authorized to enter and inspect by and through a properly identified person, at reasonable hours, plumbing and plumbing systems.

(d) Make plumbing inspections for another state or local jurisdiction upon request by an appropriate building official. Such inspections shall be made in accordance with the applicable plumbing codes of the requesting jurisdiction. Fees charged for such inspection services shall be as provided in the rules promulgated by the board.

(e) Summon witnesses to appear and testify before him on any matter within the provisions of this chapter. No person shall be required to testify outside the county wherein he resides or where his principal place of business is located. Such summons to testify shall be issued and served in like manner as a subpoena to witness issued from the district court, or in other manner consistent with the procedure of the division of building safety. In case any witness shall fail or refuse to appear and testify upon being summoned as herein provided, the clerk of the district court of the county shall upon demand by the administrator or his designated agent, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed. Violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court.

(f) Administer oaths and take affirmations of witnesses appearing before him; and have the power to appoint competent persons to issue subpoenas, administer oaths and take testimony.

(g) Impose civil penalties as provided in this chapter and the rules of the Idaho plumbing board.

(h) In addition to any other penalties specified in this chapter, whenever any person violates the provisions of this chapter and the rules of the Idaho plumbing board, the administrator may maintain an action in the

name of the state of Idaho to enjoin that person from any further violations. Such action may be brought either in the county in which the acts are claimed to have been or are being committed, or in the county where the defendant resides, or in Ada county.

(i) Upon the filing of a certified complaint in the district court, the court, if satisfied that the acts complained of have been, or probably are being, or may be committed, may issue a temporary restraining order, or a preliminary injunction, or both, without bond, enjoining the defendant from the commission of any such act or acts constituting the violation.

(ii) A copy of the complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other similar civil actions.

(iii) If the commission of the act or acts is established, the court shall enter a decree permanently enjoining the defendant from committing such act or acts. If an injunction issued under the provisions of this section is violated, the court, or the judge thereof at chambers, may summarily try and punish the offender for contempt of court.

(2) It shall be the duty of the administrator to give notice to cities which supply sewer service to areas outside their city limits and who have requested in writing such notice from the administrator of all permits issued relative to sewer installations. The notice shall be given within ten (10) days from the date the permit was requested for such installation. The notice shall contain a map of the physical location of the installation and reference to the date of inspection if the city so requests.

History.

1957, ch. 214, § 12, p. 454; am. 1974, ch. 39, § 30, p. 1023; am. 1983, ch. 43, § 1, p. 100; am. and redesign. 1984, ch. 123, § 8, p. 281;

am. 1996, ch. 421, § 54, p. 1406; am. 2004, ch. 250, § 8, p. 715; am. 2004, ch. 311, § 2, p. 872; am. and redesign. 2005, ch. 25, § 98, p. 82.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Prior Laws.

Former § 54-2607 was repealed. See Prior Laws, § 54-2601.

Amendments.

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 250, inserted present subsection (1)(d).

The 2004 amendment, by ch. 311, inserted the subsection (1) and (2) designations, sub-

stituted "chapter" for "act" in subsections (1), (1)(a) and (1)(d), and added present subsections (1)(g) and (h).

Compiler's Notes.

This section was formerly compiled as § 39-2712 and was amended and redesignated as § 54-2607 by S.L. 1984, ch. 123, § 8.

Effective Dates.

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

Section 4 of S.L. 2004, ch. 311 declared an emergency. Approved March 24, 2004.

OPINIONS OF ATTORNEY GENERAL

In light of the promulgation of uniform building and safety codes by the legislature, the authority granted to the appropriate state agencies, and the directive by the governor

that such codes will apply to state projects, the state's authority over its projects is complete. There is simply no basis for local infringement by a municipality. OAG 90-6.

54-2608. Revocation of certificates of competency — Suspension — Refusal to renew. — The administrator of the division of building safety shall have on the recommendation of the board the power to revoke, suspend or refuse to issue a renewal of any certificate of competency if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent or has a second time violated any of the rules prescribed by the board, or as prescribed by this act. Before the administrator shall refuse to grant a renewal of said certificate to any applicant or shall revoke or suspend any certificate previously granted, he shall hold a hearing giving such applicant or holder of said certificate fifteen (15) days written notice of his intended action by registered mail directed to the applicant or holder at the address given on said certificate or in the application for said certificate, stating generally the basis for his intended action; and the applicant or holder of said certificate shall have the opportunity to produce testimony in his own behalf at a time and place specified in said notice. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. If the administrator, after the hearing, shall refuse to grant a renewal of said certificate or shall suspend or revoke any certificate previously granted, said applicant or holder of a certificate may seek judicial review of the administrator's final order in accordance with the provisions of chapter 52, title 67, Idaho Code. Any person whose certificate has been revoked may, after the expiration of one (1) year from the date of revocation, but not before, apply for a new certificate of competency.

History. § 9, p. 281; am. 1993, ch. 216, § 83, p. 587;
1957, ch. 214, § 13, p. 454; am. 1974, ch. 39, am. 1996, ch. 421, § 55, p. 1406.
§ 31, p. 1023; am. and redesign. 1984, ch. 123,

STATUTORY NOTES

Prior Laws. 2713 and was amended and redesignated as
Former § 54-2608 was repealed. See Prior § 54-2608 by S.L. 1984, ch. 123, § 9.
Laws, § 54-2601. The term "this act", at the end of the first
sentence, refers to S.L. 1957, chapter 214,
which is codified as §§ 54-2601 to 54-2614,
54-2615 to 54-2622, and 54-2623 to 54-2630.

Compiler's Notes.
This section was formerly compiled as § 39-

54-2609. Character of examination — Certification. — The board shall determine the character and extent of the examination based upon the standards and requirements prescribed by this act, and upon certifications of examination results by the board, the director [administrator] shall issue certificates of competency to the successful applicants.

History. § 32, p. 1023; am. and redesign. 1984, ch. 123,
1957, ch. 214, § 14, p. 454; am. 1974, ch. 39, § 10, p. 281.

STATUTORY NOTES

Prior Laws.

Former § 54-2609 was repealed. See Prior Laws, § 54-2601.

Compiler's Notes.

This section was formerly compiled as § 39-2714 and was amended and redesignated as § 54-2609 by S.L. 1984, ch. 123, § 10.

The term "this act" refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601

to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

The bracketed insertion was added by the compiler to reflect a change that probably should have been incorporated into S.L. 1996, ch. 421, which transferred many powers and duties from the director of the department of labor and industrial services to the administrator of the division of building safety. See § 54-2615.

54-2610. Certificate a prerequisite. — It shall be unlawful for any person or firm, copartnership, association or corporation, to engage in the business, trade, practice or work of plumbing in this state after the adoption of this chapter, unless such person, or responsible person representing such firm, copartnership, association or corporation, has successfully passed an examination as provided herein and has issued to him a state certificate of competency, which shall not be transferable, and said certificates of competency shall not be required for sewer contractors, sewage disposal contractors, or any excavating or utility contractors, or for their employees, as set forth and defined in section 54-2602(1)(f), Idaho Code.

History.

1957, ch. 214, § 15, p. 454; am. 1975, ch. 173, § 2, p. 467; am. and redesi. 1984, ch.

123, § 11, p. 281; am. 2007, ch. 197, § 3, p. 597.

STATUTORY NOTES

Prior Laws.

Former § 54-2610 was repealed. See Prior Laws, § 54-2601.

tuted "chapter" for "act" near the middle and updated the section reference at the end.

Compiler's Notes.

This section was formerly compiled as § 39-2715 and was amended and redesignated as § 54-2610 by S.L. 1984, ch. 123, § 11.

Amendments.

The 2007 amendment, by ch. 197, substi-

OPINIONS OF ATTORNEY GENERAL

The plumbing division of the state department of labor and industrial services [plumbing board in division of building safety] has authority to issue plumbing permits to nonlicensed individuals or firms other than those identified in § 54-2602 when necessary

to protect the public health and safety; the process for issuing such permits is within the discretionary powers of the plumbing board as the board shall establish by exercise of its rulemaking powers. OAG 86-8.

54-2611. Classification of competency. — There shall be three (3) classifications of competency in the business, trade, practice or work of plumbing and three (3) classifications of competency in the business, trade, practice or work of specialty plumbing, as follows:

(a) A plumbing contractor shall be any person, or a member, representative or agent of a firm, copartnership, association, or corporation skilled in the planning and supervision of the construction, installation, improvement, extension and alteration of plumbing systems, and who is familiar with the provisions of this act and the rules made by the Idaho plumbing

board, and who is competent to offer and to assume to work on a contract basis and to direct the work of qualified employees. A contractor who in person does plumbing work shall also be qualified as a journeyman plumber, or have in his employ on all work a qualified journeyman.

(b) A plumbing journeyman shall be any person, who as his principal occupation, is engaged in the installation, improvement, extension and alteration of plumbing systems, and who is familiar with the provisions of this act and who works in the employ and under the direction of a plumbing contractor.

(c) A plumbing apprentice shall be any person, who as his principal occupation is engaged in learning and assisting in installation, improvement, extension and alteration of plumbing systems. Apprentices shall not perform plumbing work except under the supervision of a journeyman.

(d) A specialty contractor shall be any person, or a member, representative or agent of a firm, copartnership, association, or corporation skilled in the specialty classification for which he is certified and who is familiar with the provisions of this act and rules made by the Idaho plumbing board, and who is competent to offer and to assume work on a contract basis and to direct the work of qualified employees. A specialty contractor who in person does specialty work shall also be qualified as a specialty journeyman, or have in his employ on all work a specialty journeyman.

(e) A specialty journeyman shall be any person who is engaged in the specialty classification for which he is certified and who is familiar with the provisions of this act and who works in the employ and under the direction of a plumbing or specialty contractor.

(f) A specialty apprentice shall be any person who is engaged in learning and assisting in the specialty classification for which he is registered. Specialty apprentices shall not perform specialty work except under supervision of a specialty journeyman.

History.

1957, ch. 214, § 16, p. 454; am. 1974, ch. 39, § 33, p. 1023; am. and redesign. 1984, ch. 123, § 12, p. 281; am. 1995, ch. 253, § 2, p. 828.

STATUTORY NOTES

Prior Laws.

Former § 54-2611 was repealed. See Prior Laws, § 54-2601.

Compiler's Notes.

This section was formerly compiled as § 39-2716 and was amended and redesignated as § 54-2611 by S.L. 1984, ch. 123, § 12.

The term "this act", in subsections (1) and (2), refers to S.L. 1957, chapter 214, which is

codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

The term "this act", in subsections (d) and (e), refers to S.L. 1995, chapter 253, which is codified as §§ 54-2606, 54-2611, 54-2614, 54-2616, and 54-2618.

Probably both references to "this act" should be to "this chapter," being chapter 26, title 54, Idaho Code.

54-2612. Examinations — Time and place — Notification. — Times and places for examinations shall be determined by the board and all applicants shall be notified thereof.

History.

1957, ch. 214, § 17, p. 454; am. and redesign.
1984, ch. 123, § 13, p. 281.

STATUTORY NOTES**Prior Laws.**

Former § 54-2612 was repealed. See Prior
Laws, § 54-2601.

2717 and was amended and redesignated as
§ 54-2612 by S.L. 1984, ch. 123, § 13.

Compiler's Notes.

This section was formerly compiled as § 39-

54-2613. Application for examination. — All applications for examination shall be filed with the board on the form provided. When any person, or persons, is designated and authorized to be or act as an agent for the applicant, such authorization shall be in writing, signed by the applicant and the person designated, a certified copy of which shall be filed with the board. All applications shall expire and be cancelled after a period of one year if the applicant fails to appear for examination within such period.

History.

1957, ch. 214, § 18, p. 454; am. and redesign.
1984, ch. 123, § 14, p. 281.

STATUTORY NOTES**Prior Laws.**

Former § 54-2613 was repealed. See Prior
Laws, § 54-2601.

2718 and was amended and redesignated as
§ 54-2613 by S.L. 1984, ch. 123, § 14.

Compiler's Notes.

This section was formerly compiled as § 39-

54-2614. Application and registration fees. — All applicants shall pay to the board at the time of application for examination, a fee in accordance with the following:

Application for Plumbing Contractor	\$22.50
Application for Plumbing Journeyman	22.50
Application for Specialty Contractor	22.50
Application for Specialty Journeyman	22.50

Apprentices and specialty apprentices shall not be required to be examined for competency, but shall register as an apprentice or a specialty apprentice with the division of building safety and maintain such registration during the entire period in which they are accruing their experience. The registration fee for apprentices shall be fifty dollars (\$50.00) per renewal. The registration fee for specialty apprentices shall be thirty dollars (\$30.00) per renewal. The board may contract with a professional testing service to administer any licensing examination and any contracted professional testing service shall be responsible to establish and collect the examination fee. Any person who fails to pass the examination may apply for reexamination at the next scheduled examination upon payment of the examination fee. Should any person fail to pass the examination the second time, the

board may refuse to allow a subsequent examination until the expiration of one (1) year.

History.

1957, ch. 214, § 19, p. 454; am. 1983, ch. 246, § 1, p. 666; am. and redesisg. 1984, ch.

123, § 15, p. 281; am. 1995, ch. 253, § 3, p. 828; am. 2009, ch. 111, § 1, p. 363.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Prior Laws.

Former § 54-2614 was repealed. See Prior Laws, § 54-2601.

Amendments.

The 2009 amendment, by ch. 111, in the second sentence, substituted “as an apprentice or a specialty apprentice with the division of building safety” for “with the board” and substituted “during the entire period in which

they are accruing their experience” for “yearly”; in the third sentence, deleted “and specialty apprentices” following “for apprentices” and substituted “fifty dollars (\$50.00) per renewal” for “five dollars (\$5.00) initial and five dollars (\$5.00) per year renewal”; and added the fourth sentence.

Compiler’s Notes.

This section was formerly compiled as § 39-2719 and was amended and redesignated as § 54-2614 by S.L. 1984, ch. 13, § 15.

54-2614A. Apprentice and specialty apprentice registration and renewal. — Registration for an apprentice shall be valid for five (5) years and shall expire on the last day of the month in which it is set to expire unless renewed. Registration for a specialty apprentice shall be valid for three (3) years and shall expire on the last day of the month in which it is set to expire unless renewed. An apprentice registration or specialty apprentice registration may be renewed at any time during the month prior to its expiration. Failure of any apprentice to timely renew a registration shall cause a lapse of the registration, but it may be revived within one (1) year upon payment of the renewal fee.

History.

I.C., § 54-2614A, as added by 2004, ch. 244, § 1, p. 709; am. 2009, ch. 111, § 2, p. 363.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 111, in the first sentence, substituted “shall be valid for five (5) years and shall expire on the last day of the month in which it is set to expire unless

renewed” for “or a specialty apprentice shall expire twelve (12) months from the date of issue unless renewed” and added the present second sentence.

54-2615. Certificate of competency. — Upon the applicant’s successful completion of an examination, as certified by the board, he shall be issued a certificate of competency in the form of a card, providing thereon the holder’s name, classification for which the applicant was examined, year current, space for the holder’s signature, the certificate number, and the signature of the administrator of the division of building safety.

History.

1957, ch. 214, § 20, p. 454; am. 1974, ch. 39,

§ 34, p. 1023; am. and redesisg. 1984, ch. 123, § 16, p. 281; am. 1996, ch. 421, § 56, p. 1406.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Prior Laws.

Former § 54-2615 was repealed. See Prior Laws, § 54-2601.

Compiler's Notes.

This section was formerly compiled as § 39-2720 and was amended and redesignated as § 54-2620 by S.L. 1984, ch. 123, § 16.

54-2616. Fees for certificates — Prorating. — (1) Before a certificate is issued, and for the renewal thereof, the successful applicant shall pay to the division of building safety a fee in accordance with the following schedule:

	Initial Fee	Renewal
Plumbing Contractor	\$75.00	\$36.00
Plumbing Journeyman	15.00	7.20
Specialty Contractor	75.00	36.00
Specialty Journeyman	15.00	7.20

(2) The administrator of the division of building safety shall have the authority to prorate and assess the initial certificate fees as follows: the amount of the initial fee, plus the product of one-twelfth (1/12) of the amount of the renewal fee for that particular category of certificate multiplied by the number of months in excess of twelve (12) for which the certificate is issued. No certificate shall be issued for less than twelve (12) months.

(3) The administrator of the division of building safety shall have the authority to prorate and assess the renewal fees as follows: the number of months the certificate will be in effect, multiplied by one-twelfth (1/12) of the renewal fee for that particular category of certificate. No renewal shall be issued for less than twelve (12) months.

History.

1957, ch. 214, § 21, p. 454; am. 1974, ch. 39, § 35, p. 1023; am. 1983, ch. 246, § 2, p. 666;

am. and redesign. 1984, ch. 123, § 17, p. 281; am. 1995, ch. 253, § 4, p. 828; am. 1996, ch. 421, § 57, p. 1406; 2004, ch. 244, § 2, p. 709.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

2721 and was amended and redesignated as § 54-2616 by S.L. 1984, ch. 123, § 17.

Prior Laws.

Former § 54-2616 was repealed. See Prior Laws, § 54-2601.

Effective Dates.

Section 4 of S.L. 2004, ch. 244 provided that sections 2 and 3 should take effect on and after January 1, 2005.

Compiler's Notes.

This section was formerly compiled as § 39-

54-2617. Certificate expiration — Renewal — Rules for staggered schedule. — (1) Certificates of competency shall be issued for a period of three (3) years, and shall expire three (3) years from the date of issue, unless sooner revoked or suspended.

(2) A certificate of competency for plumbing contractor or journeyman may be renewed at any time during the month prior to its expiration by providing proof of completion of the continuing education requirements as established by the board and compliance with all other renewal require-

ments of statute or rule. A certificate of competency for plumbing specialty contractor and specialty journeyman may be renewed at any time during the month prior to its expiration by compliance with all renewal requirements of statute or rule.

(3) Failure of any holder to timely renew a certificate of competency shall cause lapse of the certificate, but it may be revived within one (1) year without examination only upon payment of the full initial fee.

(4) The board shall promulgate rules to provide for a staggered schedule of issuing and renewing certificates of competency.

History. 1984, ch. 123, § 18, p. 281; am. 2004, ch. 244, 1957, ch. 214, § 22, p. 454; am. and redesisg. § 3, p. 709; am. 2009, ch. 126, § 2, p. 405.

STATUTORY NOTES

Prior Laws. Former § 54-2617 was repealed. See Prior Laws, § 54-2601.

Amendments. The 2009 amendment, by ch. 126, in subsection (2), in the first sentence, inserted “for plumbing contractor or journeyman” and added “by providing proof of the completion of the continuing education requirements as established by the board and compliance with all other renewal requirements of statute or rule,” and added the last sentence; and designated the former final paragraph in subsection (2) as subsection (3), redesignating former subsection (3) as subsection (4).

Compiler’s Notes. This section was formerly compiled as § 39-2722 and was amended and redesignated as § 54-2617 by S.L. 1984, ch. 123, § 18.

Effective Dates. Section 4 of S.L. 2004, ch. 244 provided that sections 2 and 3 should take effect on and after January 1, 2005.

54-2618. Certificate to be displayed and certificates of competency and registration carried or in vicinity of work site. — All holders of valid certificates in the contractor and specialty contractor classifications shall display a sign or card, upon a form prescribed and furnished by the division of building safety, for public view in their place of business. All journeymen and specialty journeymen shall have their certificate of competency on their persons or in the immediate vicinity of the work site during working hours. Apprentices and specialty apprentices shall have evidence of registration on their persons or in the immediate vicinity of the work site during working hours.

History. § 19, p. 281; am. 1995, ch. 253, § 5, p. 828; 1957, ch. 214, § 23, p. 454; am. 1974, ch. 39, am. 1996, ch. 421, § 58, p. 1406; am. 2004, ch. § 36, p. 1023; am. and redesisg. 1984, ch. 123, 311, § 3, p. 872.

STATUTORY NOTES

Cross References. 2723 and was amended and redesignated as Division of building safety, § 67-2601A. § 54-2618 by S.L. 1984, ch. 123, § 19.

Prior Laws. Fformer § 54-2618 was repealed. See Prior Laws, § 54-2601.

Effective Dates. Section 4 of S.L. 2004, ch. 311 declared an emergency. Approved March 24, 2004.

Compiler’s Notes. This section was formerly compiled as § 39-

54-2619. Municipal fees for permits, inspections — Exceptions. —

No provision of this act shall deprive incorporated cities, including those specially chartered, from collections of fees from permits and inspections. Notwithstanding the provisions of sections 50-304, 50-306 and 50-606, Idaho Code, no cities, including those specially chartered, shall require occupational license fees from plumbing contractors and journeymen who possess a valid certificate of competency issued by the administrator of the division of building safety, except those cities that have qualified plumbing inspectors.

History.

1957, ch. 214, § 24, p. 454; am. 1963, ch. 138, § 4, p. 392; am. 1983, ch. 246, § 3, p.

666; am. and redesisg. 1984, ch. 123, § 20, p. 281; am. 1996, ch. 421, § 59, p. 1406.

STATUTORY NOTES**Cross References.**

Division of building safety, § 67-2601A.

2724 and was amended and redesignated as § 54-2619 by S.L. 1984, ch. 123, § 20.

Prior Laws.

Former § 54-2619 was repealed. See Prior Laws, § 54-2601.

The term "this act", in the first sentence, refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

Compiler's Notes.

This section was formerly compiled as § 39-

54-2620. Permits required — Exceptions. — It shall be unlawful for any person, firm, copartnership, association or corporation to do, or cause or permit to be done, after the adoption of this act, whether acting as principal, agent or employee, any construction, installation, improvement, extension or alteration of any plumbing system in any building, residence or structure, or service lines thereto, in the state of Idaho, without first procuring a permit from the division of building safety authorizing such work to be done, except:

(1) Within the boundaries of incorporated cities, including those specially chartered, where such work is regulated and enforced by an ordinance or code equivalent to this chapter;

(2) Within such additional area within five (5) miles of the city limits over which such city has elected to exercise jurisdiction relative to building drains and building sewers pursuant to section 50-606, Idaho Code, on buildings, residences and structures being converted from an on-site sewage disposal system to a sewage disposal system supplied by the city, where such work is regulated and enforced by an ordinance or code equivalent to this chapter. Cities shall provide the division of building safety written notice of the area over which such jurisdiction will be exercised. No city may exercise such jurisdiction within the limits of another city unless both cities have agreed by ordinance to allow such jurisdiction. For purposes of this chapter building drain and building sewer will be defined according to the definition found in the uniform plumbing code or as adopted by the board, pursuant to section 54-2601, Idaho Code.

Permits shall be issued only to a person, or to a firm, copartnership, association or corporation represented by a person holding a valid certificate of competency, or to a person who does his own work in a family dwelling as

defined in section 54-2602(1)(a), Idaho Code, except that permits shall not be required for plumbing work as defined in section 54-2602(1)(b), (1)(c) and (1)(d), Idaho Code.

Provided, a licensed plumber is hereby authorized, after making application for permit and pending receipt of permit, to proceed and complete improvements or alterations to plumbing systems, when the cost of said improvement or alteration does not exceed the sum of five hundred dollars (\$500). Inspection of such work shall be the responsibility of the permit holder pending an official inspection, which shall be made within sixty (60) days after notification of inspection.

History.

1957, ch. 214, § 25, p. 454; am. 1963, ch. 138, § 5, p. 392; am. 1974, ch. 39, § 37, p. 1023; am. 1982, ch. 287, § 1, p. 738; am. 1983,

ch. 43, § 2, p. 100; am. and redesign. 1984, ch. 123, § 21, p. 281; am. 1996, ch. 421, § 60, p. 1406; am. 2007, ch. 197, § 4, p. 597.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Prior Laws.

Former § 54-2620 was repealed. See Prior Laws, § 54-2601.

Amendments.

The 2007 amendment, by ch. 197, redesignated former subsections (a) and (b) as (1) and (2), and therein substituted "chapter" for "act" throughout; and updated the section references in the next-to-last paragraph.

Compiler's Notes.

This section was formerly compiled as § 39-2725 and was amended and redesignated as § 54-2620 by S.L. 1984, ch. 123, § 21.

The term "this act", in the introductory paragraph, refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

Effective Dates.

Section 2 of S.L. 1982, ch. 287 declared an emergency. Approved April 1, 1982.

OPINIONS OF ATTORNEY GENERAL

The plumbing division of the state department of labor and industrial services [plumbing board in the division of building safety] has authority to issue plumbing permits to nonlicensed individuals or firms other than those identified in § 54-2602 when necessary to protect the public health and safety; the process for issuing such permits is within the discretionary powers of the plumbing board as the board shall establish by exercise of its rulemaking powers. OAG 86-8.

The provisions of § 54-1001B and this section do not empower the city to require the state or its contractors to obtain electrical and plumbing permits; therefore, a city does not have the authority to require the state of Idaho to obtain building permits when building or remodeling state buildings within the city. OAG 90-6.

54-2621. Work not requiring permits. — A permit shall not be required for the clearing of stoppages or repairing of leaks in pipes, valves, fixtures, appliances or appurtenances of any plumbing system when such work does not involve or require any functional rearrangement of pipes, valves or fixtures comprising the plumbing system.

History.

1957, ch. 214, § 26, p. 454; am. and redesign. 1984, ch. 123, § 22, p. 281.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-2726 and was amended and redesignated as § 54-2621 by S.L. 1984, ch. 123, § 22.

54-2622. Permits — Application — Requirements. — Any person, firm, copartnership, association or corporation entitled to receive a permit, shall make application to the board on the form provided. A description of the work proposed to be done, location, ownership, occupancy and use of the premises shall be given. The board may require plans and specifications and such other information as may be deemed necessary and pertinent before granting a permit. When it has been determined that the information furnished by the applicant is in compliance with this act, the permit shall be issued upon payment of the fees as hereinafter fixed.

History.

1957, ch. 214, § 27, p. 454; am. and redesign. 1984, ch. 123, § 23, p. 281.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-2727 and was amended and redesignated as § 54-2622 by S.L. 1984, ch. 123, § 23.

The term "this act", in the last sentence, refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

54-2622A. Inspections of modular buildings — When authorized — Approval and certification. — Notwithstanding the exception provided in subsection (1)(h) of section 54-2602, Idaho Code, the administrator of the division of building safety may make plumbing inspections of any modular building upon written request from the manufacturer.

(1) Inspections shall be made in accordance with the codes adopted in this chapter.

(2) Inspection fees shall be as provided in section 39-4303, Idaho Code.

(3) The administrator may issue inspection tags for inspections if the buildings are in compliance with the codes adopted in this chapter.

History.

I.C., § 54-2622A, as added by 2004, ch. 250, § 9, p. 715; am. 2007, ch. 197, § 5, p. 597; am. 2007, ch. 252, § 10, p. 737.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Amendments.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 197, updated the subsection reference in the introductory paragraph.

The 2007 amendment, by ch. 252, substituted "provided in section 39-4303, Idaho Code" for "promulgated in board rule and shall be paid prior to the inspection" in subsection (2).

Effective Dates.

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

54-2623. Fee — Permit — Inspection. — The applicant shall pay to

the department [division] at the time of application, a permit fee for each permit issued and an inspection fee in accordance with the schedule fixed by the Idaho plumbing board, which schedule shall not require inspection fees in amounts to exceed the expense of providing inspection.

History. § 38, p. 1023; am. and redesign. 1984, ch. 123, 1957, ch. 214, § 28, p. 454; am. 1974, ch. 39, § 24, p. 281.

STATUTORY NOTES

Compiler's Notes. This section was formerly compiled as § 39-2728 and was amended and redesignated as § 54-2623 by S.L. 1984, ch. 123, § 24. The bracketed insertion was added by the compiler to reflect a change that probably should have been incorporated into S.L. 1996, ch. 421, which transferred many powers and duties from the department of labor and industrial services to the division of building safety. See § 54-2615.

54-2624. Inspection by agent — Tests. — All pipes, fittings, valves, vents, fixtures, appliances and appurtenances shall be inspected by a designated, qualified and properly identified agent of the division of building safety to insure compliance with provisions of this act. In order to make inspections uniform and complete, the board shall make, promulgate and publish such rules as are necessary to insure that any plumbing system has been designed, constructed, installed, improved, extended or altered in accordance with the provisions of this act and in accordance with the rules made, promulgated and published by the Idaho plumbing board.

History. § 39, p. 1023; am. and redesign. 1984, ch. 123, 1957, ch. 214, § 29, p. 454; am. 1974, ch. 39, § 25, p. 281; am. 1996, ch. 421, § 61, p. 1406.

STATUTORY NOTES

Cross References. The term "this act" refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

Compiler's Notes. This section was formerly compiled as § 39-2729 and was amended and redesignated as § 54-2624 by S.L. 1984, ch. 123, § 25.

54-2625. Approval and certification of inspection. — The inspector shall either approve that portion of the work completed at the time of inspection or shall notify the permit holder wherein the same fails to comply with this act and the rules and regulations of the Idaho plumbing board, and when final inspection has been made and the work approved, the inspector shall certify to the owner or permit holder or agency serving the premises by attaching securely an inspector's tag at the approximate service entrance that inspection has been made and found satisfactory as required by this act and ready for service.

History. 1957, ch. 214, § 30, p. 454; am. and redesign. 1984, ch. 123, § 26, p. 281.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-2730 and was amended and redesignated as § 54-2625 by S.L. 1984, ch. 123, § 26.

The term "this act" refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

54-2626. Notification for inspection — Fee for reinspection. — It shall be the duty of the permit holder to notify the nearest representative of the division of building safety at least twelve (12) hours prior to the time of inspection, exclusive of Sundays and holidays, that he will be ready for inspection at a stipulated time. When reinspection is required after the final inspection because of failure to meet requirements of this act, it shall be made at a flat charge not to exceed the cost of reinspection.

History.

1957, ch. 214, § 31, p. 454; am. 1974, ch. 39,

§ 40, p. 1023; am. and redesign. 1984, ch. 123, § 27, p. 281; am. 1996, ch. 421, § 62, p. 1406.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Compiler's Notes.

This section was formerly compiled as § 39-2731 and was amended and redesignated as § 54-2626 by S.L. 1984, ch. 123, § 27.

The term "this act", in the last sentence, refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

54-2627. Appointment of inspectors — Qualifications — Unlawful practices. — The administrator of the division of building safety shall appoint such number of inspectors as may be required for the effective enforcement of this act. All inspectors shall be skilled in plumbing installations with not less than five (5) years actual experience, shall possess certificates of competency prior to appointment, and shall be fully familiar with the provisions of this act and rules made by both the administrator and the Idaho plumbing board. No inspector employed by the division of building safety and assigned to the enforcement of this act shall be engaged or financially interested in a plumbing business, trade, practice or work, or the sale of any supplies connected therewith, nor shall he act as an agent, directly or indirectly, for any person, firm, copartnership, association or corporation so engaged. Inspectors employed by municipalities electing to claim exemption under this act must possess the qualifications set forth in this section.

History.

1957, ch. 214, § 32, p. 454; am. 1963, ch. 138, § 6, p. 392; am. 1974, ch. 39, § 41, p.

1023; am. and redesign. 1984, ch. 123, § 28, p. 281; am. 1996, ch. 421, § 63, p. 1406; am. 2000, ch. 120, § 2, p. 260.

STATUTORY NOTES

Cross References.

Division of building safety § 67-2601A.

Compiler's Notes.

This section was formerly compiled as § 39-

2732 and was amended and redesignated as § 54-2627 by S.L. 1984, ch. 123, § 28.

The term "this act", in the first two sentences, refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615

to 54-2622, and 54-2623 to 54-2630.

The term “this act” in the last sentence refers to S.L. 1963, chapter 138, which is codified as §§ 54-2601, 54-2602, 54-2606, 54-2619, 54-2620, 54-2627, and 54-2629.

Probably all references to “this act” should be to “this chapter,” being chapter 26, title 54, Idaho Code.

Effective Dates.

Section 120 of S.L. 2000, ch. 120 provided that the act shall be in full force and effect on and after July 1, 2000.

54-2628. Violation — Misdemeanor. — Any person, or a firm, copartnership, association or corporation by and through a member, representative or agent, who shall engage in the business, trade, practice or work of plumbing without a certificate of competency or without registration, or perform work without a permit as provided by this act, or who shall violate any provision of this act or the rules made by both the administrator of the division of building safety and the Idaho plumbing board herein provided for, or who shall refuse to perform any duty lawfully enjoined upon him by the administrator within the prescribed time, or who shall fail, neglect, or refuse to obey any lawful order given or made by the administrator shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten dollars (\$10.00) or more than three hundred dollars (\$300), or to imprisonment in the county jail not to exceed thirty (30) days, or both. Each such violation shall constitute a separate offense.

History. § 42, p. 1023; am. and redesign. 1984, ch. 123, 1957, ch. 214, § 33, p. 454; am. 1974, ch. 39, § 29, p. 281; am. 1996, ch. 421, § 64, p. 1406.

STATUTORY NOTES

Cross References. The term “this act”, in the first sentence, Division of building safety § 67-2601A. refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

Compiler’s Notes. * This section was formerly compiled as § 39-2733 and was amended and redesignated as § 54-2628 by S.L. 1984, ch. 123, § 29.

54-2629. Attorney general — Prosecuting attorneys. — It shall be the right and duty of the attorney general or the prosecuting attorneys of the various counties to represent and appear for the people of the state of Idaho and the administrator of the division of building safety in all actions and proceedings involving any question under this act or under any order or act of the administrator and perform such other services as required.

History. 1023; am. and redesign. 1984, ch. 123, § 30, p. 1957, ch. 214, § 34, p. 454; am. 1963, ch. 281; am. 1996, ch. 421, § 65, p. 1406. 138, § 7, p. 392; am. 1974, ch. 39, § 43, p.

STATUTORY NOTES

Cross References. 2734 and was amended and redesignated as Attorney general, § 67-1401 et seq. § 54-2629 by S.L. 1984, ch. 123, § 30. Division of building safety, § 67-2601A.

Compiler’s Notes. The term “this act” refers to S.L. 1957, chapter 214, which is codified as §§ 54-2601 to 54-2614, 54-2615 to 54-2622, and 54-2623 to 54-2630.

This section was formerly compiled as § 39-

54-2630. Plumbing board fund created. — All money received by the board or the division of building safety, under the terms and provisions of this chapter, shall be paid into the state treasury as directed by the provisions of section 59-1014, Idaho Code, and shall be, by the state treasurer, placed to the credit of the Idaho plumbing board fund, which is hereby created as a dedicated fund. All such moneys, hereafter placed in said fund, are hereby set aside and perpetually appropriated to the division of building safety to carry into effect the provisions of this chapter.

History.

1957, ch. 214, § 35, p. 454; am. 1974, ch. 39, § 44, p. 1023; am. and redesiɡ. 1984, ch. 123,

§ 31, p. 281; am. 1996, ch. 421, § 66, p. 1406; am. 2010, ch. 110, § 1, p. 222.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.
State treasurer, § 67-1201 et seq.

Amendments.

The 2010 amendment, by ch. 110, twice substituted “chapter” for “act” and substituted “paid into the state treasury as directed by the provisions of section 59-1014, Idaho Code” for “paid into the state treasury monthly.”

Compiler’s Notes.

This section was formerly compiled as § 39-2735 and was amended and redesignated as § 54-2630 by S.L. 1984, ch. 123, § 31.

Effective Dates.

Section 40 of S.L. 1984, ch. 40 declared an emergency. Approved March 31, 1984.

CHAPTER 27

SCRAP DEALERS

SECTION.

54-2701. Definitions.

54-2702. Records required for purchasing nonferrous or stainless steel metal property from the general public.

54-2703. Requirements for purchasing or receiving metal property from the general public.

SECTION.

54-2704. Record for commercial accounts.

54-2705. Reporting to law enforcement.

54-2706. Preserving evidence of metal theft.

54-2707. Unlawful violations.

54-2708. Exemptions.

54-2701. Definitions. — The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Commercial account” means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under this chapter.

(2) “Commercial enterprise” means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) “Commercial metal property” means: Utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including, but not limited to, a telephone, cable, electric, water, natural gas, or other utility, or railroad; building construction materials consisting of

copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes; or stainless steel designed to be used in agricultural or commercial businesses.

(4) “Nonferrous metal property” means metal property for which the value of the metal property is derived from the property’s content of copper, brass, aluminum, bronze, lead, zinc, nickel, gold, silver, platinum and their alloys.

(5) “Record” means a paper, electronic, or other method of storing information.

(6) “Scrap metal business” means a scrap metal supplier, scrap metal recycling center, and scrap metal processor.

(7) “Scrap metal processor” means a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

(8) “Scrap metal recycling center” means a person with a current business license that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

(9) “Scrap metal supplier” means a person that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycling center or scrap metal processor and that does not maintain a fixed business location in the state.

(10) “Transaction” means a pledge, or the purchase of, or the trade of any item of nonferrous metal property by a scrap metal business from a member of the general public. “Transaction” does not include donations or the purchase or receipt of nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business.

History.

I.C., § 54-2701, as added by 2009, ch. 152,
§ 2, p. 441.

STATUTORY NOTES

Prior Laws.

Former § 54-2701, which comprised 1967, ch. 281, § 1, p. 787, was repealed by S.L. 2009, ch. 152, § 1.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 1 to 3, 48 to 53.

54-2702. Records required for purchasing nonferrous or stainless steel metal property from the general public. — (1) At the time of a transaction, every scrap metal business doing business in this state shall produce, wherever that business is conducted, an accurate and legible record of each transaction involving nonferrous metal property or stainless steel metal property. This record must be written in the English language, documented on a standardized form or in electronic form, and contain the following information:

- (a) The signature of the person with whom the transaction is made;
- (b) The date, location and value of the transaction;
- (c) The name of the employee representing the scrap metal business in the transaction;
- (d) The name and street address of the person with whom the transaction is made;
- (e) A photocopy or digital image of a current driver's license that is valid to operate a motor vehicle in the state of Idaho or a United States or Idaho government-issued picture identification of the seller; and
- (f) The license plate number of any vehicle required to have such a plate, if any, used by the person with whom the transaction is made.

(2) For every transaction that involves nonferrous or stainless steel metal property, every scrap metal business doing business in the state shall require the person with whom a transaction is being made to sign a declaration.

The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following: "I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated and the time of day noted by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

History.

I.C., § 54-2702, as added by 2009, ch. 152,
§ 2, p. 441.

STATUTORY NOTES

Prior Laws.

Former § 54-2702, which comprised 1967, ch. 281, § 2, p. 787; am. 1989, ch. 409, § 1, p. 1001; am. 2008, ch. 100, § 1, p. 282; am. 2008, ch. 213, § 1, p. 669, was repealed by S.L. 2009, ch. 152, § 1.

54-2703. Requirements for purchasing or receiving metal property from the general public. — (1) No scrap metal business may enter into a transaction to purchase or receive nonferrous metal property or stainless steel from any person who cannot produce identification as described in section 54-2702(1)(e), Idaho Code.

(2) No scrap metal business may purchase or receive commercial metal

property unless the seller: (a) Has a commercial account with the scrap metal business; (b) can prove ownership of the property by producing written documentation that the seller is the owner of the property; or (c) can produce written documentation that the seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

(3) No scrap metal business may enter into a transaction to purchase or receive metallic wire that was burned in whole or in part to remove insulation unless the seller can produce written proof to the scrap metal business that the wire was lawfully burned or lawfully recovered from a burned structure.

(4) No scrap metal business may purchase or receive beer kegs from anyone except a distributor or manufacturer of beer kegs or licensed brewery.

History.

I.C., § 54-2703, as added by 2009, ch. 152,
§ 2, p. 441.

STATUTORY NOTES

Prior Laws.

Former § 54-2703, which comprised 1967,
ch. 281, § 3, p. 787; am. 1989, ch. 409, § 2, p.

1001; am. 2008, ch. 100, § 2, p. 282, was
repealed by S.L. 2009, ch. 152, § 1.

54-2704. Record for commercial accounts. — (1) Every scrap metal business must create and maintain a permanent record with a commercial enterprise, including another scrap metal business, in order to establish a commercial account. That record, at a minimum, must include the following information:

- (a) The full name of the commercial enterprise or commercial account;
- (b) The business address and telephone number of the commercial enterprise or commercial account;
- (c) The full name of the primary contact of the commercial enterprise or whoever is authorized to deliver nonferrous metal and stainless steel and commercial metal property to the scrap metal business; and
- (d) The full name of the primary contact of the commercial enterprise who is authorized to permit a scrap metal business to take possession of nonferrous metal and stainless steel and commercial metal property at the business location of the commercial enterprise.

(2) The record maintained by a scrap metal business for a commercial account must document every purchase or receipt of nonferrous metal and stainless steel and commercial metal property from the commercial enterprise. The documentation must include, at a minimum, the following information:

- (a) The time, date and value of the property being purchased or received;
- (b) A description of the predominant types of property being purchased or received.

(3) Payment for nonferrous metal and stainless steel and/or commercial metal property purchased or received by the scrap metal business will be made by check payable to the commercial enterprise.

History.

I.C., § 54-2704, as added by 2009, ch. 152,
§ 2, p. 441.

STATUTORY NOTES**Prior Laws.**

Former § 54-2704, which comprised 1967, ch. 281, § 4, p. 787; am. 1989, ch. 409, § 3, p. 1001, was repealed by S.L. 2009, ch. 152, § 1.

54-2705. Reporting to law enforcement. — Upon request by any commissioned law enforcement officer of the state or any of its political subdivisions, every scrap metal business shall make available a full, true, and correct record from the purchase or receipt of nonferrous metal property or stainless steel involving a specific individual, vehicle, or item of nonferrous metal property or commercial metal property. This information may be transmitted within a specified time of not less than five (5) business days to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

History.

I.C., § 54-2705, as added by 2009, ch. 152,
§ 2, p. 441.

STATUTORY NOTES**Prior Laws.**

Former § 54-2705, which comprised 1967, ch. 281, § 5, p. 787; am. 1989, ch. 409, § 4, p. 1001, was repealed by S.L. 2009, ch. 152, § 1.

54-2706. Preserving evidence of metal theft. — (1) Following notification, either verbally or in writing, from a commissioned law enforcement officer of the state or any of its political subdivisions, that an item of nonferrous metal property, stainless steel, or commercial metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling, and shall place an identifying tag or other suitable identification upon the property. The scrap metal business shall hold the property for a period of time as directed by the applicable law enforcement agency up to a maximum of ten (10) business days.

History.

I.C., § 54-2706, as added by 2009, ch. 152,
§ 2, p. 441.

STATUTORY NOTES**Compiler's Notes.**

As enacted in 2009, this section contains a subsection (1), but no subsection (2).

54-2707. Unlawful violations. — It is a misdemeanor for:

(1) Any person to deliberately remove, alter, or obliterate any manufac-

turer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of nonferrous metal property or commercial metal property in order to deceive a scrap metal business;

(2) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;

(3) Any person to sign the declaration required under this chapter knowing that the nonferrous metal property subject to the transaction is stolen;

(4) Any scrap metal business to possess commercial metal property that was not lawfully purchased or received under the requirements of this chapter;

(5) Any scrap metal business to engage in a series of transactions valued at less than twenty dollars (\$20.00) with the same seller for the purposes of avoiding the requirements of this chapter; or

(6) Any person to intentionally violate the provisions of section 54-2703, Idaho Code.

(7) Any person who has pled guilty to or been found guilty of violating the provisions of this section for a second time within five (5) years is guilty of a felony.

History.

I.C., § 54-2707, as added by 2009, ch. 152,
§ 2, p. 441.

54-2708. Exemptions. — The provisions of this chapter do not apply to transactions conducted by the following:

(1) Motor vehicle dealers;

(2) Persons in the business of operating an automotive repair facility;

(3) Persons in the business of buying or selling empty food and beverage containers, including metal food and beverage containers, except beer kegs; and

(4) Transactions of a value of less than twenty dollars (\$20.00).

History.

I.C., § 54-2708, as added by 2009, ch. 152,
§ 2, p. 441.

CHAPTER 28

GEOLOGISTS

SECTION.

54-2801. Short title — Declaration of policy.

54-2802. Definitions.

54-2803. State board of registration for professional geologists — Creation — Terms of members — Oath.

54-2804. Qualifications for board membership.

54-2805. Compensation for board members.

SECTION.

54-2806. Removal by governor for cause.

54-2807. Board meetings.

54-2808. Powers and duties of board.

54-2809. Finances.

54-2810. Records — Register. [Repealed.]

54-2811. Roster. [Repealed.]

54-2812. Qualifications for registration.

54-2813. Application forms — Application fee.

SECTION.

- 54-2814. Examination and fee — Time and place — Scope — Reexamination — Reexamination fee.
- 54-2815. Certificate of registration — Certificate fee — Signing of work — Seal — Invalid affixations unlawful.
- 54-2816. Expiration of certificate — Renewal — Renewal fee.

SECTION.

- 54-2817. Lost, destroyed or mutilated certificates — Charge. [Repealed.]
- 54-2818. State and political subdivision contracts — Exceptions.
- 54-2819. Discipline.
- 54-2820. Judicial review of board action. [Repealed.]
- 54-2821. Violations of chapter.
- 54-2822. Exceptions to act.

54-2801. Short title — Declaration of policy. — (1) This chapter shall be known as the “Idaho Professional Geologists Act.”

(2) In order to safeguard life, health, and property, and to promote the public welfare, the practice of geology in this state is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice, or offer to practice, geology for others in this state, as defined in the provisions of this chapter, or to use in connection with his name or otherwise assume, or advertise any title or description tending to convey the impression that he is a geologist, unless such person has been duly registered or is otherwise exempted under the provisions of this chapter. The right to engage in the practice of geology shall be deemed a personal right, based on the qualifications of the individual as evidenced by the certificate of registration, and shall not be transferable.

History.

1971, ch. 137, § 1, p. 576; am. 2008, ch. 249, § 1, p. 731.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 249, in the section catchline, added “Short title”; added subsection (1); and added the subsection (2)

designation to existing provisions, and therein twice substituted “chapter” for “act” and inserted “is otherwise” in the second sentence.

54-2802. Definitions. — (1) Within the intent of this chapter, it is recognized that “geology” is a fundamental science dealing with the physical earth, the organisms, materials and structures composing the earth, the physical forces affecting the earth, and the utilization of the knowledge of the earth and its constituent rocks, minerals, liquids, gases and other materials insofar as these factors may influence the safety and public welfare.

The terms, “geology and professional geology,” within the intent of this chapter, shall include any professional service such as consultation, investigation, evaluation, planning, and mapping, or responsible supervision of such activities in connection with any public or private project, as governed by the principles of geology, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service is rendered in a professional capacity and requires the application of geologic principles and data.

A person shall be construed to practice or offer to practice geology, within the meaning and intent of this chapter, who practices any branch of the

profession of geology; or who by verbal claim, sign, advertisement, letter-head, card, or in any other way represents himself to be a geologist, or through the use of some other title implies that he is a geologist or that he is registered under this chapter; or who holds himself out as able to perform, or who does perform any geological services or work recognized as geology.

Further, within the intent of this chapter, it is recognized that the information derived from geological studies may be utilized in various associated fields or sciences concerned with the safety and public welfare.

Registration under this chapter, however, does not qualify the registrant to practice professionally in any field or science other than geology.

(2) The term “geologist,” within the intent of this chapter, shall mean a person who is qualified by reason of his knowledge of principles of geology, the physical sciences, and mathematics acquired by education and practical experience, to engage in the practice of professional geology.

(3) The term “professional geologist,” as used in this chapter, shall mean a person who has been duly registered by the state board of registration for professional geologists.

(4) The term “board” as used in this chapter shall mean the state board of registration for professional geologists, hereinafter provided by this chapter.

History.

1971, ch. 137, § 2, p. 576; am. 2002, ch. 266,
§ 1, p. 788.

54-2803. State board of registration for professional geologists — Creation — Terms of members — Oath. — A state board of registration for professional geologists is hereby created in the department of self-governing agencies whose duty it shall be to administer the provisions of this chapter. The board shall consist of five (5) members, who shall be appointed by the governor and shall have the qualifications required by section 54-2804, Idaho Code.

The board shall be comprised of members representing at least three (3) of the following categories: academic geologists, government geologists, salaried company geologists and independent or consultant geologists.

Each member of the board shall take, subscribe and file the oath required by chapter 4, title 59, Idaho Code, before entering upon the duties of his office. On the expiration of the term of any member his successor shall be appointed in like manner by the governor for a term of five (5) years.

Members of the board shall hold office until the expiration of the term for which they were appointed and until their successors have been appointed and qualified.

History.

1971, ch. 137, § 3, p. 576; am. 1974, ch. 13,
§ 175, p. 138; am. 2002, ch. 266, § 2, p. 788.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

54-2804. Qualifications for board membership. — Members of the board shall be citizens of the United States and residents of this state, and they shall have been engaged in the practice of geology for at least seven (7) years and shall never have been the subject of a disciplinary action under the provisions of this chapter.

History.

1971, ch. 137, § 4, p. 576; am. 2002, ch. 266, § 3, p. 788; am. 2009, ch. 75, § 1, p. 210.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 75, substituted “seven (7) years” for “twelve (12) years.”

54-2805. Compensation for board members. — Each member of the board shall be compensated as provided by section 59-509(n), Idaho Code.

History.

1971, ch. 137, § 5, p. 576; am. 1980, ch. 247, § 72, p. 582; am. 2002, ch. 266, § 4, p. 788.

54-2806. Removal by governor for cause. — The governor may remove any member of the board for misconduct, incompetence, neglect of duty, or any other sufficient cause. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as provided in section 54-2803, Idaho Code.

History.

1971, ch. 137, § 6, p. 576; am. 2008, ch. 249, § 2, p. 731.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 249, substituted

“incompetence” for “incompetency” and added “Idaho Code.”

54-2807. Board meetings. — The board shall hold at least one (1) regular meeting each year. The board may provide for such additional regular meetings as necessary and for special meetings. Notice of all meetings shall be given as may be provided in the open meeting law. The board shall annually elect a chairman and a vice chairman, who shall be members of the board. Three (3) members shall constitute a quorum.

History.

1971, ch. 137, § 7, p. 576; am. 2002, ch. 266, § 5, p. 788; am. 2008, ch. 249, § 3, p. 731.

STATUTORY NOTES

Cross References.

Open meeting law, §§ 67-2340 to 67-2347.

Amendments.

The 2008 amendment, by ch. 249, in the

next-to-last sentence, deleted “and a secretary” following “vice chairman” and “and they may provide for an assistant who need not be a member of the board” from the end.

54-2808. Powers and duties of board. — (1) The board shall have the power to adopt and amend rules including, but not limited to, a code of ethics and standards of conduct which may be reasonably necessary for the proper performance of its duties and the administration of this chapter and the regulation of proceedings before the board. It shall adopt and have an official seal. It shall have power to provide an office, office equipment and facilities and such books and records as may be reasonably necessary for the proper performance of its duties. The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest.

(2) The board is authorized to enter into mutual aid agreements, interstate compacts, contracts or agreements to facilitate the practice and regulation of geology in this state.

(3) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may request the attendance of witnesses and the production of such books, records and papers as may be required at any hearing before it, and for the purpose of disciplinary matters pursuant to this chapter the board may request a district court to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers. Subpoenas shall be directed to the sheriff of any county in the state of Idaho where such witness resides or may be found. Subpoenas shall be served and returned in the same manner as subpoenas in a criminal case. The fees and mileage of the sheriff and witnesses shall be the same as that allowed in district court criminal cases, which fees and mileage shall be paid from any funds in the state treasury available therefor in the same manner as other expenses of the board are paid. Disobedience of any subpoena issued by the district court or the refusal by any witness in failing to testify concerning any matter regarding which he may lawfully be interrogated, or the failure to produce any books, records or papers, shall constitute a contempt of the district court of any county where such disobedience or refusal occurs, and said court, or any judge thereof, by proceedings for contempt in said court, may, if such contempt be found, punish said witness as in any other case of disobedience of a subpoena issued from such court or refusal to testify therein.

(4) The board is hereby authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this chapter or to restrain any violation thereof.

History. § 176, p. 138; am. 2002, ch. 266, § 6, p. 788; 1971, ch. 137, § 8, p. 576; am. 1974, ch. 13, am. 2009, ch. 75, § 2, p. 210.

STATUTORY NOTES

Cross References. Bureau of occupational licenses, § 67-2602. Contempt, § 7-601 et seq.	Amendments. The 2009 amendment, by ch. 75, in the section catchline, deleted “subpoenas” from
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the end; added the subsection (1) and (3) designations and, in the latter, substituted “and for the purpose of disciplinary matters pursuant to this chapter the board may re-

quest” for “and for that purpose the board may request”; and added subsections (2) and (4).

54-2809. Finances. — All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account].

History.

1971, ch. 137, § 9, p. 576; am. 1994, ch. 180,

§ 104, p. 420; am. 2002, ch. 266, § 7, p. 788; am. 2008, ch. 249, § 4, p. 732.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Contempt, § 7-601 et seq.

Amendments.

The 2008 amendment, by ch. 249, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

The bracketed insertions were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 104 of S.L. 1994, ch. 180 became effective January 2, 1995.

54-2810. Records — Register. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1971, ch.

137, § 10, p. 576; am. 2002, ch. 266, § 8, p. 788, was repealed by S.L. 2009, ch. 75, § 3.

54-2811. Roster. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1971, ch.

137, § 11, p. 576; am. 1991, ch. 30, § 13, p. 58 was repealed by S.L. 2002, ch. 266, § 9.

54-2812. Qualifications for registration. — (1) All applicants shall successfully pass an examination given by or under the supervision of the board. No applicant shall be registered having habits of character that would justify revocation or suspension of registration, as provided in section 54-2819, Idaho Code. The following shall be considered as minimum evidence that the applicant is qualified to take an examination for registration as a professional geologist:

(2) Completion of thirty (30) semester units in courses in geological science leading to a degree in the geological sciences of which at least twenty-four (24) units are in third or fourth year, and/or graduate courses; and have at least seven (7) years of professional geological work which shall

include either a minimum of three (3) years of professional geological work under the supervision of a registered geologist; or, wherein the applicant has been under the direct supervision of an individual acceptable to the board, or, wherein the applicant has demonstrated five (5) years of progressive experience in responsible charge of geological work that is acceptable to the board.

Each year of undergraduate study in the geological sciences shall count as one-half (1/2) year of training up to a maximum of two (2) years, and each year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year for year toward meeting the requirement in this category, provided that the total annual teaching experience includes six (6) semester units of third or fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of four (4) years towards meeting the requirement for at least seven (7) years of professional geological work as set forth above.

The ability of the applicant shall have been demonstrated by having performed the work in a responsible position, as the term "responsible position" is defined in rules adopted by the board. The adequacy of the required supervision and experience shall be determined in accordance with standards set forth in the rules adopted by the board.

Three (3) references from geologists in responsible positions must be filed with the application for registration.

(3) A person holding a certificate of registration to engage in the practice of geology, issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of any foreign country, who, in the opinion of the board, meets the requirements of this chapter, based on verified evidence may, upon application, be registered without further examination.

An applicant otherwise qualified as prescribed in this chapter need not be actively engaged in the practice of geology to be eligible for registration.

History.

141, § 1, p. 348; am. 2002, ch. 266, § 10, p. 1971, ch. 137, § 12, p. 576; am. 1983, ch. 788; am. 2008, ch. 249, § 5, p. 732.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 249, rewrote the first sentence in subsection (1), which formerly read: "No applicant may be registered until he has successfully passed an examination given by or under the supervi-

sion of the board, nor shall an applicant be registered having habits of character that would justify revocation or suspension of registration, as provided in section 54-2819, Idaho Code."

54-2813. Application forms — Application fee. — Applications for registration shall be on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's education and a detailed summary of his geologic work.

(1) The application fee for professional geologists shall be set by the board at not more than one hundred dollars (\$100).

(2) Should the board deny the issuance of a certificate of registration to any applicant, the application fee shall be retained by the board.

History.

1971, ch. 137, § 13, p. 576; am. 1992, ch. 71,

§ 1, p. 206; am. 2002, ch. 266, § 11, p. 788;

am. 2008, ch. 249, § 6, p. 733.

STATUTORY NOTES

Cross References.

Military exemption from fees, § 67-2602A.

“deposited” following “application fee” in subsection (2).

Amendments.

The 2008 amendment, by ch. 249, deleted

54-2814. Examination and fee — Time and place — Scope — Reexamination — Reexamination fee. — Examinations shall be held at such time and place as the board shall determine. If examinations are required on fundamental geologic subjects, such as are ordinarily given in college curricula, the applicant may be permitted to take this part of the professional examination prior to completion of the requisite years of experience in geologic work, and satisfactory passage of this portion of the professional examination by the applicant shall constitute a credit toward the applicant’s complete professional examination for a period not to exceed ten (10) years. The examination fee and the reexamination fee shall be set by the rules of the board.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant’s ability to supervise geologic projects so as to ensure the safety of life, health and property. A candidate failing his first examination may apply for reexamination within one (1) year of the failed exam without filing a new application and shall be entitled to such reexamination on payment of the reexamination fee set by the board. A candidate who fails on reexamination, must file a new application before he can again be admitted to examination, and such new application shall not be filed prior to one (1) year following the date of the last examination taken by the applicant; provided, however, that it shall be unlawful for a candidate failing any examination to practice professional geology under subsections (b) and (c) of section 54-2822, Idaho Code.

History.

1971, ch. 137, § 14, p. 576; am. 1992, ch. 71,

§ 2, p. 206; am. 2002, ch. 266, § 12, p. 788;

am. 2008, ch. 249, § 7, p. 733.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 249, in the first paragraph, deleted “Written and/or oral” from the beginning, and in the last sentence, inserted “and the reexamination fee” and

“rules of the”; and in the last paragraph, substituted “payment of the reexamination fee set by the board” for “payment of an additional fee to be set by the board” in the second sentence.

54-2815. Certificate of registration — Certificate fee — Signing of work — Seal — Invalid affixations unlawful. — The board shall issue a certificate of registration upon payment of a certificate fee as set by the board, to any applicant who, in the opinion of the board, has satisfactorily met the requirements of this chapter. Certificates of registration shall show the full name of the registrant, shall give a serial number, and shall be signed by the chairman of the board.

The issuance of a certificate of registration by the board shall be prima facie evidence that the person named thereon is entitled to all the rights and privileges of a registered professional geologist, while the certificate remains current and in good standing.

All drawings, specifications, reports, or other geologic papers or documents involving geologic work as defined in section 54-2802, Idaho Code, which shall have been prepared or approved by a registered geologist or prepared by a subordinate employee under the direction of a registered geologist, for the use of or for delivery to any person or for public record within this state shall be signed by the geologist or be impressed with an authorized seal or the seal of a nonresident practicing under the provisions of section 54-2822, Idaho Code, either of which shall indicate responsibility for the papers or documents.

Each registrant hereunder may, upon registration, obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional geologist."

It shall be unlawful for any person to affix a signature, stamp or seal to any document, after the certificate of the registrant named thereon has expired or been suspended or revoked, unless said certificate shall have been renewed, reinstated, or reissued.

History. 266, § 13, p. 788; am. 2008, ch. 249, § 8, p. 1971, ch. 137, § 15, p. 576; am. 2002, ch. 734.

STATUTORY NOTES

Amendments. The 2008 amendment, by ch. 249, in the first paragraph, in the first sentence, deleted "all" preceding "the requirements," and in the last sentence, deleted "and the secretary" following "chairman" and "under seal of the board" from the end; in the second paragraph, substituted "the certificate remains current and in good standing" for "the said certificate remains unrevoked or unexpired"; in the third paragraph, inserted "prepared by" and "authorized," and substituted "the papers or documents" for "them."

54-2816. Expiration of certificate — Renewal — Renewal fee. — Renewal of a certificate of registration may be effected at any time prior to expiration, the payment of a renewal fee to be fixed by the board at not more than one hundred dollars (\$100). All certificates of registration issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed. The maximum fee for reinstatement shall not exceed two hundred dollars (\$200) as determined by the rules of the board. All renewals and reinstatements shall be in accordance with section 67-2614, Idaho Code.

History.

1971, ch. 137, § 16, p. 576; am. 1992, ch. 71, § 3, p. 206; am. 2008, ch. 249, § 9, p. 735.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 249, rewrote

the section to the extent that a detailed comparison is impracticable.

54-2817. Lost, destroyed or mutilated certificates — Charge. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1971, ch.

137, § 17, p. 576; am. 1992, ch. 71, § 4, p. 206, was repealed by S.L. 2008, ch. 249, § 10.

54-2818. State and political subdivision contracts — Exceptions.

— As to geology work performed within the state of Idaho, this state and its political subdivisions, such as county, city, or legally constituted boards, districts, commissions or authorities, shall contract for geological services only with persons registered under this chapter, provided further that nothing in this section or chapter shall be construed to prevent registered professional engineers from lawfully practicing soils mechanics, foundation engineering, geological engineering, and other professional engineering, as provided in chapter 12, title 54, Idaho Code, and licensed architects from lawfully practicing architecture as provided in chapter 3, title 54, Idaho Code.

History.

1971, ch. 137, § 18, p. 576; am. 2009, ch. 75, § 4, p. 210.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 75, added "As to geology work performed within the state of

Idaho" at the beginning and twice substituted "chapter" for "act."

54-2819. Discipline. — (1) Grounds for discipline. The board shall have the power to deny any application for or renewal of a certificate of registration or to revoke, suspend or otherwise discipline any registrant or registration issued pursuant to this chapter and to limit or restrict the practice of any registrant upon a determination by the board that the person:

- (a) Made, or caused to be made, a false, fraudulent or forged statement, document, credentials or representation in procuring or attempting to procure a certificate of registration to practice geology; or
- (b) Practiced geology under a false or assumed name; or
- (c) Was convicted of, found guilty, received a withheld judgment or suspended sentence in this or any other state of action constituting a felony or of a crime involving moral turpitude; or

(d) Violated the provisions of this chapter or rules, standards of conduct and practice, or any ethical codes as may be adopted by the board; or

(e) Is or has been grossly negligent, incompetent, or reckless in the practice of geology; or

(f) Has had a license, certificate, or registration to practice as a professional geologist suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(2) Proceedings. Every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice.

(a) All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code, and the Idaho rules of administrative procedure of the attorney general (IDAPA 04.11.01).

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence.

(3) Probation. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor or supervise the practice of geology by the registrant subject to such order for the prescribed probationary period.

(4) Subsequent review. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice professional geology and that he is not likely to violate the provisions of this section or rules adopted hereunder in the future.

(5) Costs and fees. The board may, pursuant to an order of discipline or as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs and fees incurred by the board in proceedings upon which the order was entered.

(6) Administrative fines. The board may, pursuant to an order of discipline, require the payment of an administrative fine not to exceed one thousand dollars (\$1,000) for each violation of the provisions of this section or rules adopted hereunder.

History.

1971, ch. 137, § 19, p. 576; am. 1993, ch. 216, § 84, p. 587; am. 2002, ch. 266, § 14, p. 788; am. 2009, ch. 75, § 5, p. 210.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Amendments.

The 2009 amendment, by ch. 75, in the introductory paragraph in subsection (1), substituted "suspend or otherwise discipline any registrant or registration issued" for "suspend

or amend any such certificate issued"; in subsection (2)(a), added "and the Idaho rules of administrative procedure of the attorney general (IDAPA 04.11.01)"; and added subsection (6).

Compiler's Notes.

The reference enclosed in parentheses so appeared in the law as enacted.

54-2820. Judicial review of board action. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1971, ch.

137, § 20, p. 576; am. 1993, ch. 216, § 85, p.

587, was repealed by S.L. 2002, ch. 266, § 15.

54-2821. Violations of chapter. — (1) Any person who shall practice, or offer to practice, professional geology for others in this state without being registered in accordance with the provisions of this chapter, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or a revoked certificate of registration or practice at any time during a period the board has suspended or revoked a certificate of registration or any person who shall violate any of the provisions of this chapter, shall be guilty of a misdemeanor.

(2) The board may employ legal counsel or may request the attorney general of this state or any assistant designated by him to act as legal advisor of the board, and the attorney general shall be reimbursed by the board for any expenses incurred by the attorney general in representing the board; and all violations of the provisions of this chapter shall be prosecuted by the prosecuting attorney of the county or counties in which the violations of the chapter may be committed.

History.

1971, ch. 137, § 21, p. 576; am. 1974, ch. 13, § 177, p. 138; am. 2009, ch. 75, § 6, p. 210.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.
Punishment for misdemeanor when not specified otherwise, § 18-113.

subsection designations and substituted "chapter" for "act" throughout the section.

Effective Dates.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

Amendments.

The 2009 amendment, by ch. 75, added the

54-2822. Exceptions to act. — This act shall not be construed to prevent or to affect:

(a) The practice of any profession or trade for which a license is required under any law of this state; or

(b) The practice of professional geology by a person not a resident of and having no established place of business in this state, when such practice does not exceed in the aggregate more than thirty (30) days in any calendar year and provided such person is duly licensed or registered to practice such profession in a state in which the requirements and qualifications for obtaining a certificate of registration or license are not lower than those specified in this act for obtaining the registration required for such work,

upon examination, and provided further that such nonresident shall file with the board, on or before entering the state for commencing such work, a statement giving his name, residence, the number of his license or certificate of registration, and by what authority issued, and upon the completion of the work, a statement of the time engaged in such work within the state; or

(c) The practice of a person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty (30) days in any calendar year the profession of geology, if he shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this act; provided, that such a person is legally qualified by registration to practice said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act. Such practice shall continue only for such time as the board requires for the consideration of the applicant for registration; or

(d) The work of an employee or a subordinate of a person holding a certificate of registration under this act, or an employee of a person practicing lawfully under subsection (a), (b) or (c) of this section, provided that such work is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this act or a person practicing lawfully under subsection (a), (b) or (c) of this section; or

(e) The practice of officers and employees of the United States while engaged within this state in the practice of the profession of geology for said government; or

(f) This act shall not be construed to prevent or to affect the practice of geology by staff members of a corporation or a company as long as data acquired by them is for internal corporate or company use only.

History.

1971, ch. 137, § 22, p. 576.

STATUTORY NOTES**Compiler's Notes.**

The term "this act," used throughout this section, refers to S.L. 1971, ch. 137, which is codified as §§ 54-2801 to 54-2809, 54-2812 to 54-2816, 54-2818, 54-2819, 54-2821, and 54-2822. Probably, the reference should be to "this chapter," being chapter 28, title 54, Idaho Code.

Section 23 of S.L. 1971, ch. 137, read: "If

any provisions of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act, which can be given effect without the invalid reason provisions or applications, and to this end the provisions of this act are declared to be severable."

CHAPTER 29

SPEECH AND HEARING SERVICES PRACTICE ACT

SECTION.

- 54-2901. Short title.
- 54-2902. Declaration of policy.
- 54-2903. Definitions.
- 54-2904. License required.
- 54-2905. Exemptions.
- 54-2906. Dealing and fitting of hearing aids.
- 54-2907. Audiology, speech-language pathology and hearing aid dealers and fitters support personnel — Speech-language pathology aides and speech-language pathology assistants.
- 54-2908. Speech and hearing services licensure board.
- 54-2909. Officers — Quorum — Meetings — Compensation.
- 54-2910. Powers and duties of the board.
- 54-2911. Disposition of receipts — Expenses.
- 54-2912. Qualifications for licensure — Audiologist.
- 54-2913. Qualifications for licensure — Speech-language pathologist.
- 54-2914. Qualifications for licensure —

SECTION.

- Speech-language pathologist aide.
- 54-2915. Qualifications for licensure — Speech-language pathologist assistant.
- 54-2916. Qualifications for licensure — Hearing aid dealer and fitter.
- 54-2917. Dual licensure.
- 54-2918. License by endorsement and educational equivalency.
- 54-2919. Provisional permit.
- 54-2920. Denial of application.
- 54-2921. Renewal and reinstatement of licenses — Public display — Inactive license.
- 54-2922. Reporting of name or address change.
- 54-2923. Grounds for disciplinary action and denial.
- 54-2924. Investigations and disciplinary actions — Procedures.
- 54-2925. Disciplinary actions — Penalties.
- 54-2926. Judicial review.
- 54-2927. Unlawful practice — Penalties.

54-2901. Short title. — This chapter shall be known and may be cited as the “Speech and Hearing Services Practice Act.”

History.

I.C., § 54-2901, as added by 2005, ch. 277, § 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2901, which comprised 1971, ch. 261, § 1, p. 1050; am. 1974, ch. 13, § 178,

p. 138; am. 1992, ch. 60, § 1, p. 178, was repealed by § 1 of S.L. 2005, ch. 277.

54-2902. Declaration of policy. — To protect the public health, safety and welfare, and to provide for administrative supervision, licensure and regulation, every person practicing or offering to practice audiology, speech-language pathology, or hearing aid dealing and fitting services as defined in this chapter, who meets and maintains prescribed standards of competence and conduct, shall be licensed as provided in this chapter. This chapter shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.

History.

I.C., § 54-2902, as added by 2005, ch. 277, § 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2902, which comprised 1971, p. 138; am. 1988, ch. 119, § 1, p. 219; am. 1992, ch. 60, § 2, p. 178, was repealed by § 1 of S.L. 2005, ch. 277.

54-2903. Definitions. — As used in this chapter:

(1) “Applicant” means a person applying for a license or permit under this chapter.

(2) “Audiologist” means a natural person who meets the requirements of this chapter, is duly licensed in accordance with this chapter and is engaged in the practice of audiology.

(3) “Board” means the speech and hearing services licensure board.

(4) “Bureau” means the bureau of occupational licenses.

(5) “Department” means the department of self-governing agencies.

(6) “Hearing aid” means any wearable electronic instrument or other device designed for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, including earmolds attached to the hearing aid, but excluding batteries and cords. “Hearing aid” does not include those devices classified by the federal drug administration as assistive listening devices.

(7) “Hearing aid dealer and fitter” means a person licensed pursuant to this chapter to provide hearing aid evaluations and to sell, dispense and fit hearing aids in the state of Idaho.

(8) “Hearing aid evaluation” means the measurement of human hearing for the purpose of selecting or adapting a hearing aid, and not for obtaining medical diagnosis or legal documentation, and includes the following:

- (a) Air conduction threshold testing;
- (b) Bone conduction threshold testing;
- (c) Speech reception threshold testing;
- (d) Speech discrimination testing;
- (e) Most comfortable loudness level testing; and
- (f) Uncomfortable loudness level testing.

(9) “Improper fitting” means a pattern of hearing aid selections or adaptations which cause physical damage to any portion of the ear, in which the electroacoustic characteristics of the hearing aid are inadequate for the consumer, or in which the hearing aid is physically or acoustically unsuited to the consumer including, but not limited to:

- (a) An all-in-the-ear hearing aid which continually falls out of the ear;
- (b) Any hearing aid or earmold which causes inappropriate feedback, pain or discomfort to the ear within thirty (30) days of the original delivery of the hearing aid to the consumer;
- (c) Fitting a consumer with impacted cerumen; or
- (d) Fitting a consumer with either an apparent unilateral sensorineural hearing loss or a significant air-bone gap without prior medical evaluation and approval.

(10) “License” means a license issued by the board under this chapter authorizing practice as a speech-language pathologist, audiologist, or hearing aid dealer and fitter.

(11) "Practice of audiology" means to apply the principles, methods and procedures of measurement, evaluation, testing, counseling, consultation and instruction that relate to the development and disorders of hearing, vestibular functions and related language and speech disorders to prevent, modify or rehabilitate the disorders or to assist individuals in auditory and related skills for communication, and may include intraoperative monitoring and the fitting, adjustment, programming, selling and dispensing of hearing aids and assistive devices.

(12) "Practice of fitting and dealing in hearing aids" means the selection, adaptation, dispensing, fitting or sale of hearing aids, and includes the testing of hearing by means of an audiometer, or by any other device designed specifically for these purposes. The practice also includes the making of impressions for earmolds.

(13) "Practice of speech-language pathology" means the application of principles, methods and procedures of measurement, evaluation, testing, counseling, rehabilitation, screening, consultation and instruction that relate to the development and disorders of human communication including, but not limited to, speech (articulation, fluency, voice, accent reduction) and language, swallowing, cognitive communication disorders, augmentative and alternative communication systems and related hearing disorders.

(14) "Provisional permit" means a permit issued to an applicant who is registered to obtain required experience to become licensed.

(15) "Speech-language pathologist" means a natural person who meets the requirements of this chapter, is duly licensed in accordance with this chapter, and who engages in the practice of speech-language pathology.

(16) "Speech-language pathologist aide" means a natural person who meets the requirements of this chapter, is duly licensed in accordance with this chapter, and who works under the direction and supervision of a speech-language pathologist. A speech-language pathologist aide shall not act or provide services independently of a supervising speech-language pathologist licensed in Idaho.

(17) "Speech-language pathologist assistant" means a natural person who meets the requirements of this chapter, is duly licensed in accordance with this chapter, and works under the direction and supervision of a speech-language pathologist. A speech-language pathologist assistant shall not act or provide services independently of a supervising speech-language pathologist licensed in Idaho.

History.

I.C., § 54-2903, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies,
§ 67-2601 et seq.

Prior Laws.

Former § 54-2903, which comprised 1971,
ch. 261, § 3, p. 1050; am. 1992, ch. 60, § 3, p.
178, was repealed by § 1 of S.L. 2005, ch. 277.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

54-2904. License required. — (1) Except as otherwise provided in this chapter, it shall be unlawful for any person to engage in the practice or to perform or offer to practice audiology or speech-language pathology or to act as a hearing aid dealer or fitter unless such person is duly licensed in accordance with this chapter. A license issued pursuant to this chapter shall be posted in the licensee's established place of business or carried upon the person, and shall be presented as proof of licensure upon demand.

(2) It is unlawful for any person or business entity, or its employees, agents or representatives, to use in connection with his or her name, or name of activity of the business, the words "audiologist," "audiometrist," "hearing clinician," "hearing therapist," or any other title, abbreviation or insignia indicating or implying directly or indirectly that such person, business entity, employee, agent or representative is engaged in the practice of audiology, unless such services are provided by an audiologist licensed in accordance with this chapter or lawfully exempt pursuant to section 54-2905(1)(c), Idaho Code.

(3) It is unlawful for any person or business entity, or its employees, agents or representatives, to use in connection with his or her name, or name of activity of the business, the words "speech pathologist," "speech therapist," "speech correctionist," "speech clinician," "language therapist," "language pathologist," "voice therapist," "voice pathologist," "logopedist," "communicologist," "aphasiologist," or any other title, abbreviation or insignia indicating or implying directly or indirectly that such person, business entity, employee, agent or representative is engaged in the practice of speech-language pathology, unless such services are provided by a speech-language pathologist licensed in accordance with this chapter or lawfully exempt pursuant to section 54-2905(1)(c), Idaho Code.

(4) It is unlawful for any person or business entity, or its employees, agents or representatives, to use in connection with his or her name, or name of activity of the business, the words "hearing aid dealer and fitter" or any other title, abbreviation or insignia indicating or implying directly or indirectly that such person, business entity, employee, agent or representative is engaged in the practice of audiology or hearing aid dealing and fitting, unless such services are provided by an audiologist or hearing aid dealer and fitter licensed in accordance with this chapter.

History.

I.C., § 54-2904, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES**Prior Laws.**

Former § 54-2904, which comprised 1971,

ch. 261, § 4, p. 1050, was repealed by § 1 of
S.L. 2005, ch. 277.

54-2905. Exemptions. — (1) Nothing in this chapter shall be construed to restrict:

(a) Any person licensed or regulated by the state of Idaho from engaging in the profession or practice for which he or she is licensed or regulated including, but not limited to, any certified or accredited teacher of the deaf, nurse, physician, occupational therapist, physical therapist, surgeon, or any other licensed or regulated practitioner of the healing arts;

(b) Any employee working under the direct supervision of those persons referred to in this section, so long as such employee does not hold himself or herself out as an audiologist, speech-language pathologist, speech-language pathologist aide or assistant, hearing aid dealer or fitter, or a person engaged in the practice of audiology, speech-language pathology or hearing aid dealing and fitting; or

(c) Any person working in an Idaho public school setting who has received and holds, in good standing, a pupil personnel services certificate with a speech language pathologist endorsement or audiologist endorsement, or any person working as a speech-language pathologist aide or speech-language pathologist assistant, as those terms are defined in section 54-2903, Idaho Code, in a public school setting under the direction and supervision of a person with such endorsement in good standing. Such persons, while practicing in the public school setting, shall be exempt from all provisions of this chapter; provided however, that any such person working in an Idaho public school setting with a pupil personnel services certificate with a speech-language pathologist endorsement or audiology endorsement, or a speech-language pathologist aide or speech-language pathologist assistant, shall be prohibited from practicing independently in a setting other than a public school unless such person is duly licensed as set forth in this chapter.

(2) Licensure shall not be required for persons pursuing a course of study leading to a degree in audiology, speech-language pathology, or hearing aid dealing and fitting at a college or university with a curriculum acceptable to the board provided that:

(a) Activities and services otherwise regulated by this chapter constitute a part of a planned course of study at that institution;

(b) Such persons are designated by a title such as "intern," "trainee," "student," or by other such title clearly indicating the status appropriate to their level of education; and

(c) Such persons work under the supervision of a person licensed by this state to practice audiology, speech-language pathology or hearing aid dealing and fitting in accordance with administrative rules governing supervision as adopted by the board. The supervising audiologist, speech-language pathologist or hearing aid dealer and fitter accepts full responsibility for the activities and services provided by such persons supervised.

(3) Nothing in this chapter shall restrict a person residing in another state or country and authorized to practice audiology, speech-language pathology or hearing aid dealing or fitting there, who is called in consultation by a person licensed in this state to practice audiology, speech-language

pathology, or hearing aid dealing and fitting, or who for the purpose of furthering audiology, speech-language pathology or hearing aid dealing and fitting education is invited into this state to conduct a lecture, clinic or demonstration, while engaged in activities in connection with the consultation, lecture, clinic or demonstration, so long as such person does not open an office or appoint a place to meet clients or receive calls in this state.

History.

I.C., § 54-2905, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES**Prior Laws.**

Former § 54-2905, which comprised 1971, ch. 261, § 5, p. 1050, was repealed by S.L. 1992, ch. 60, § 4.

54-2906. Dealing and fitting of hearing aids. — (1) The board shall have the authority to promulgate, by rule, written contract forms that are in compliance with the provisions of this chapter.

(2) Any licensed audiologist or hearing aid dealer and fitter who fits and dispenses hearing aids shall provide to each client:

(a) A written contract executed between the audiologist or hearing aid dealer and fitter, and the client, in accordance with rules established by the board for each hearing aid dispensed;

(b) A minimum thirty (30) day trial period that shall include a provision for the refund of moneys paid for every hearing aid dispensed; and

(c) Written notice of the name, mailing address and telephone number of the board.

(3) A person licensed as a hearing aid dealer and fitter shall, when dealing with a person eighteen (18) years of age or younger, obtain written confirmation that such person has been examined by a licensed otolaryngologist or audiologist within thirty (30) days of the sale of any hearing aid.

History.

I.C., § 54-2906, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES**Prior Laws.**

Former § 54-2906, which comprised 1971, 1992, ch. 60, § 5, p. 178; am. 2003, ch. 21, § 12, p. 77, was repealed by § 1 of S.L. 2005, ch. 277.
ch. 261, § 6, p. 1050; am. 1974, ch. 13, § 180, p. 138; am. 1988, ch. 119, § 2, p. 219; am.

54-2907. Audiology, speech-language pathology and hearing aid dealers and fitters support personnel — Speech-language pathology aides and speech-language pathology assistants. — (1) Audiology, speech-language pathology and hearing aid dealer and fitter support personnel must be trained under the direction of an audiologist, speech-language pathologist or hearing aid dealer and fitter, respectively, and may only perform designated and supervised routine audiology, speech-language pathology or hearing aid dealer and fitter tasks, respectively.

(2) Support personnel, speech-language pathology aides and speech-language pathology assistants shall not act independently and shall only work under the direction and supervision of an audiologist, speech-language pathologist or hearing aid dealer and fitter, respectively, licensed under this chapter.

(3) The supervising audiologist, speech-language pathologist or hearing aid dealer and fitter accepts full responsibility for the tasks and activities of support personnel and speech-language pathology aides and assistants under their direction and supervision.

(4) Support personnel, aides and assistants shall at all times be designated by the title "support personnel," "aide" or "assistant," respectively, which clearly identifies such person's status as support personnel or as an aide or assistant, and such person shall not use any prohibited title as set forth in section 54-2904, Idaho Code.

(5) The board shall establish rules to define the role of audiology, speech-language pathology and hearing aid dealer and fitter support personnel and speech-language pathology aides and assistants including, but not limited to:

- (a) Supervisory responsibilities of the licensee;
- (b) Ratio of support personnel, aides or assistants to licensees;
- (c) Designation of support personnel's designated and supervised routine audiology, speech-language pathology or hearing aid dealer and fitter tasks, restrictions and responsibilities;
- (d) Scope of practice for speech-language pathology aides and assistants, restrictions, and responsibilities;
- (e) Frequency, duration and documentation of direct, on-site supervision; and
- (f) The quantity and content of preservice and in-service instruction.

History.

I.C., § 54-2907, as added by 2005, ch. 277, § 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2907, which comprised 1971, ch. 261, § 7, p. 1050; am. 1992, ch. 60, § 6, p. 178, was repealed by § 1 of S.L. 2005, ch. 277. Former § 54-2907 was also purported to be

amended by S.L. 2005, ch. 38, § 1, but that amendment could not be given effect because of the repeal and reenactment of chapter 29, title 54 by S.L. 2005, ch. 277.

54-2908. Speech and hearing services licensure board. —

(1) There is hereby established in the department of self-governing agencies a speech and hearing services licensure board. The board shall consist of seven (7) members appointed by the governor. The governor may consider recommendations for appointment to the board from the Idaho speech-language hearing association, any Idaho association of hearing aid dealers and fitters, and any individual residing in this state. Three (3) members of the board shall be speech-language pathologists, two (2) members shall be audiologists, one (1) member shall be a hearing aid dealer and fitter, and one

(1) member shall be appointed from the public at-large. Each nonpublic member shall:

- (a) Have been a resident of the state of Idaho for no less than one (1) year immediately preceding his or her appointment;
- (b) Have been engaged in rendering services to the public, teaching, or performing research in the field of audiology, speech-language pathology, or hearing aid dealing and fitting for a period of not less than five (5) years preceding his or her appointment;
- (c) Be a currently practicing audiologist, speech-language pathologist or hearing aid dealer and fitter; and
- (d) At all times during such appointment to the board, maintain a valid license in audiology, speech-language pathology or hearing aid dealing and fitting, except for the first appointees who shall meet the eligibility requirements for licensure as specified in this chapter at all times after initial appointment.

(2) The public member appointed as provided herein shall have been a resident of the state of Idaho for not less than one (1) year immediately preceding his appointment. Further, such public member shall not be associated with or financially interested in the practice or business of audiology, speech-language pathology or hearing aid dealing and fitting, nor shall such public member be engaged in an allied or related profession or occupation.

(3) Members shall serve a term of three (3) years at the pleasure of the governor and shall be staggered as follows: two (2) members whose terms expire July 1, 2008; two (2) members whose terms expire July 1, 2009; and three (3) members whose terms expire July 1, 2010. The governor shall appoint members and their terms shall begin July 1, 2008. In the event of a vacancy other than expiration of a term, the governor shall appoint a replacement to fill the vacancy for the remainder of the unexpired term.

(4) Members shall disqualify themselves and, upon the motion of any interested party may, upon proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias that interferes with their fair and impartial service.

History.

I.C., § 54-2908, as added by 2005, ch. 277, § 2, p. 852; am. 2008, ch. 64, § 1, p. 167.

STATUTORY NOTES

Cross References.

Department of self-governing boards, § 67-2601 et seq.

Prior Laws.

Former § 54-2908, which comprised 1971, ch. 261, § 8, p. 1050; am. 1974, ch. 13, § 181, p. 138; am. 1988, ch. 119, § 3, p. 219; am. 1992, ch. 60, § 7, p. 178, was repealed by § 1 of S.L. 2005, ch. 277.

Amendments.

The 2008 amendment, by ch. 64, rewrote

subsection (3), which formerly read: "Each member shall serve a term of three (3) years, which shall be staggered as follows: The initial licensure board shall have two (2) members whose terms expire July 1, 2006; two (2) members whose terms expire on July 1, 2007; and three (3) members whose terms expire on July 1, 2008. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last

calendar day of the year in which they are appointed, before commencing the terms prescribed in this section. A member may be appointed to serve for one (1) additional three (3) year term. In the event of a vacancy other than by expiration of a term, the board shall appoint a qualified person to fill the vacancy for the unexpired term"; and deleted subsection (5), which read: "The governor may re-

move any member of the board from the membership of the board who is guilty of malfeasance, misfeasance or nonfeasance."

Compiler's Notes.

For more on the Idaho speech, language, hearing association, inc., see <http://www.idahosha.org>.

54-2909. Officers — Quorum — Meetings — Compensation. —

(1) The board, within sixty (60) days after the effective date of this act and annually thereafter, shall hold a meeting and elect one (1) of its members as chairperson, to serve a one (1) year term in such capacity, who shall preside at meetings of the board. In the event the chairperson is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairperson.

(2) Four (4) members of the board shall constitute a quorum, provided at least one (1) audiologist, one (1) speech-language pathologist, the hearing aid dealer and fitter member and the public member are present. The board may act by virtue of a majority vote of members present in which a quorum is present.

(3) The board shall meet at least two (2) times per year at a place, day and hour determined by the board. Other meetings may be convened at the call of the chairperson or upon the written request of any two (2) board members.

(4) Members of the board shall be compensated as provided by section 59-509(n), Idaho Code.

History.

I.C., § 54-2909, as added by 2005, ch. 277, § 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2909, which comprised 1971, ch. 261, § 9, p. 1050; am. 1992, ch. 60, § 8, p. 178, was repealed by § 1 of S.L. 2005, ch. 277.

subsection (1) refers to the the effective date of S.L. 2005, chapter 277, which was July 1, 2005.

Compiler's Notes.

The phrase "effective date of this act" in

54-2910. Powers and duties of the board. — The board shall have the authority to administer, coordinate and enforce the provisions of this chapter including, but not limited to:

(1) Evaluate the qualifications of applicants for licensure, approve and administer examinations to test the knowledge and proficiency of applicants for licensure, and approve or deny the registration and issuance and renewal of licenses and permits;

(2) Authorize all disbursements necessary to carry out the provisions of this chapter;

(3) Promulgate rules not inconsistent with the laws of this state which

are necessary to carry out the provisions of this chapter including, but not limited to, ethical standards of practice;

(4) Adopt rules allowing for continuing education;

(5) Obtain restraining orders and injunctions prohibiting conduct in violation of the provisions of this chapter, conduct investigations, issue subpoenas, examine witnesses and administer oaths, concerning practices which are alleged to violate the provisions of this chapter;

(6) Suspend or revoke or otherwise sanction licenses in the manner provided in this chapter, or place a person holding a license under this chapter on probation;

(7) Require as a condition of receiving or retaining a license issued under this chapter that restitution be paid to a consumer;

(8) Require the inspection of testing equipment and facilities of persons engaging in any practice pursuant to this chapter; and

(9) Authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest.

History.

I.C., § 54-2910, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

ch. 261, § 10, p. 1050; am. 1974, ch. 13, § 182,
p. 138; am. 1992, ch. 60, § 9, p. 178, was
repealed by § 1 of S.L. 2005, ch. 277.

Prior Laws.

Former § 54-2910, which comprised 1971,

54-2911. Disposition of receipts — Expenses. — All moneys received pursuant to the provisions of this chapter shall be deposited to the occupational license [licenses] fund [account]. All expenses incurred pursuant to the provisions of this chapter shall be paid from the occupational [licenses] fund [account].

History.

I.C., § 54-2911, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2911, which comprised 1971,
ch. 261, § 11, p. 1050; am. 1974, ch. 13, § 183,
p. 138; am. 1988, ch. 119, § 4, p. 219; am.
1992, ch. 60, § 10, p. 178; am. 2003, ch. 21,
§ 13, p. 77, was repealed by § 1 of S.L. 2005,
ch. 277.

Compiler's Notes.

The bracketed insertions were added by the compiler to correct the name of the referenced account. See § 67-2605.

54-2912. Qualifications for licensure — Audiologist. — (1) To be eligible for licensure by the board as an audiologist, the applicant shall:

(a) File a written application with the board on forms prescribed and furnished by the board. A nonrefundable application fee shall accompany

the completed written application. Such fees shall be established by the administrative rules of the board and shall be in such amounts as are reasonable and necessary for the proper execution and enforcement of this chapter;

(b) Provide documentation satisfactory to the board that the applicant possesses a master's or doctoral degree with emphasis in audiology or not less than seventy-five (75) semester credit hours of post-baccalaureate study that culminates in a doctoral or other recognized degree from a nationally accredited school for audiology with a curriculum acceptable to the board;

(c) Pass an examination in audiology approved by the board;

(d) Meet the current supervised academic clinical practicum, and supervised postgraduate professional experience approved by the board;

(e) Have never had a license for audiology revoked as part of disciplinary action from this or any other state, and shall not be found by the board to have engaged in conduct prohibited by section 54-2923, Idaho Code, provided however, the board may take into consideration the rehabilitation of the applicant and other mitigating circumstances.

(2) The applicant shall disclose on his written application:

(a) Any criminal conviction or charge, other than minor traffic infractions, against the applicant;

(b) Any disciplinary action taken against the applicant by any professional regulatory agency, including any agency within the state or any other state; and

(c) Any denial of registration or licensure by any state or district regulatory body.

(3) The board may require an applicant to be personally interviewed by the board or a designated committee of the board. The interview shall be limited to a review of the applicant's qualifications and professional credentials.

History.

I.C., § 54-2912, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2912, which comprised 1971,
ch. 261, § 12, p. 1050; am. 1974, ch. 13, § 184,

p. 138; am. 1992, ch. 60, § 11, p. 178; am.
1993, ch. 216, § 86, p. 587, was repealed by
§ 1 of S.L. 2005, ch. 277.

54-2913. Qualifications for licensure — Speech-language pathologist. — (1) To be eligible for licensure as a speech-language pathologist the applicant shall:

(a) File a written application with the board on forms prescribed and furnished by the board. A nonrefundable application fee shall accompany the completed written application. Such fees shall be established by the administrative rules of the board and shall be in such amounts as are reasonable and necessary for the proper execution and enforcement of this chapter.

(b) Provide documentation satisfactory to the board that the applicant possesses a master's or doctoral degree from a nationally accredited school of speech-language pathology with a curriculum acceptable to the board.

(c) Pass an examination in speech-language pathology approved by the board.

(d) Meet the current supervised academic clinical practicum and supervised postgraduate professional experience approved by the board.

(e) Have never had a license for speech-language pathology revoked as part of disciplinary action from this or any other state and shall not be found by the board to have engaged in conduct prohibited by section 54-2923, Idaho Code, provided however, the board may take into consideration the rehabilitation of the applicant and other mitigating circumstances.

(2) The applicant shall disclose on his written application:

(a) Any criminal conviction or charge, other than minor traffic infractions, against the applicant;

(b) Any disciplinary action taken against the applicant by any professional regulatory agency, including any agency within the state or any other state; and

(c) Any denial of registration or licensure by any state or district regulatory body.

(3) The board may require an applicant to be personally interviewed by the board or a designated committee of the board. The interview shall be limited to a review of the applicant's qualifications and professional credentials.

History.

I.C., § 54-2913, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2913, which comprised 1971,
ch. 261, § 13, p. 1050; am. 1992, ch. 60, § 12,

p. 178, was repealed by § 1 of S.L. 2005, ch.
277.

54-2914. Qualifications for licensure — Speech-language pathologist aide. — (1) To be eligible for licensure as a speech-language pathologist aide the applicant shall:

(a) File a written application with the board on forms prescribed and furnished by the board. A nonrefundable application fee shall accompany the completed written application. Such fees shall be established by the administrative rules of the board and shall be in such amounts as are reasonable and necessary for the proper execution and enforcement of this chapter;

(b) Provide documentation satisfactory to the board that the applicant possesses a baccalaureate degree from a nationally accredited school of speech-language pathology aide with a curriculum acceptable to the board;

- (c) Pass an examination in speech-language pathology aide approved by the board;
- (d) Have never had a license for speech-language pathology aide revoked as part of disciplinary action from this or any other state and shall not be found by the board to have engaged in conduct prohibited by section 54-2923, Idaho Code. Provided however, the board may take into consideration the rehabilitation of the applicant and other mitigating circumstances.
- (2) The applicant shall disclose on his written application:
 - (a) Any criminal conviction or charge, other than minor traffic infractions, against the applicant;
 - (b) Any disciplinary action taken against the applicant by any professional regulatory agency, including any agency within the state or any other state; and
 - (c) Any denial of registration or licensure by any state or district regulatory body.
- (3) The board may require an applicant to be personally interviewed by the board or a designated committee of the board. The interview shall be limited to a review of the applicant's qualifications and professional credentials.

History.

I.C., § 54-2914, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES**Prior Laws.**

Former § 54-2914, which comprised 1971,
ch. 261, § 14, p. 1050; am. 1974, ch. 13, § 185,

p. 138; am. 1992, ch. 60, § 13, p. 178, was
repealed by § 1 of S.L. 2005, ch. 277.

54-2915. Qualifications for licensure — Speech-language pathologist assistant. — (1) To be eligible for licensure as a speech-language pathologist assistant the applicant shall:

- (a) File a written application with the board on forms prescribed and furnished by the board. A nonrefundable application fee shall accompany the completed written application. Such fees shall be established by the administrative rules of the board and shall be in such amounts as are reasonable and necessary for the proper execution and enforcement of this chapter;
- (b) Provide documentation satisfactory to the board that the applicant possesses an associate's degree from a nationally accredited school of speech-language pathology assistant with a curriculum acceptable to the board;
- (c) Pass an examination in speech-language pathology assistant approved by the board; and
- (d) Have never had a license for speech-language pathology assistant revoked as part of disciplinary action from this or any other state and shall not be found by the board to have engaged in conduct prohibited by section 54-2923, Idaho Code, provided however, the board may take into

consideration the rehabilitation of the applicant and other mitigating circumstances.

(2) The applicant shall disclose on his written application:

(a) Any criminal conviction or charge, other than minor traffic infractions, against the applicant;

(b) Any disciplinary action taken against the applicant by any professional regulatory agency, including any agency within the state or any other state; and

(c) Any denial of registration or licensure by any state or district regulatory body.

(3) The board may require an applicant to be personally interviewed by the board or a designated committee of the board. The interview shall be limited to a review of the applicant's qualifications and professional credentials.

History.

I.C., § 54-2915, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2915, which comprised 1971, ch. 261, § 15, p. 1050; am. 1974, ch. 13, § 186, p. 138; am. 1980, ch. 247, § 73, p. 582; am.

1992, ch. 60, § 14, p. 178; am. 2001, ch. 82, § 1, p. 204, was repealed by § 1 of S.L. 2005, ch. 277.

54-2916. Qualifications for licensure — Hearing aid dealer and fitter. — To be eligible for licensure as a hearing aid dealer and fitter, the applicant shall:

(1) Provide verification acceptable to the board of:

(a) Being at least twenty-one (21) years of age;

(b) Good moral character and temperate habits;

(c) Never having had a license revoked or otherwise sanctioned as part of disciplinary action from this or any other state;

(d) Never having been convicted, found guilty, or received a withheld judgment for any felony; and

(e) Never having been found by the board to have engaged in conduct prohibited by this chapter, provided however, the board may take into consideration the rehabilitation of the applicant and other mitigating circumstances when considering applications for licensure;

(2) Provide educational documentation satisfactory to the board that the applicant has successfully graduated from a four (4) year course at an accredited high school or the equivalent; and

(3) Provide documentation that the applicant has successfully passed an examination approved by the board.

History.

I.C., § 54-2916, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2916, which comprised 1971, ch. 261, § 16, p. 1050; am. 1974, ch. 13, § 18,

p. 138, was repealed by S.L. 1992, ch. 60, § 15.

54-2917. Dual licensure. — A person may be licensed as both an audiologist and a speech-language pathologist if such person duly meets the requirements of licensure for both. A person obtaining licensure as both an audiologist and a speech-language pathologist shall be charged fees as though the person had obtained only one (1) license.

History.

I.C., § 54-2917, as added by 2005, ch. 277, § 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2917, which comprised 1971, ch. 261, § 17, p. 1050; am. 1974, ch. 13, § 188,

p. 138, was repealed by § 1 of S.L. 2005, ch. 277.

54-2918. License by endorsement and educational equivalency. — (1) The board may issue a license by endorsement. An applicant for licensure by endorsement shall substantiate to the board that the applicant holds a current, active and unrestricted equivalent license in another state or United States territory. The applicant shall apply for a license by endorsement on such forms, pay such fees and satisfy such other requirements as may be provided by board rule.

(2) For applicants who received their professional education outside of the United States, the board may deem such education acceptable, provided that the board is satisfied, and the applicant provides documentation acceptable to the board, that equivalent education requirements have been met. The board, in its discretion, may require by rule that applicants who received their professional education outside of the United States provide additional information to the board concerning such professional education. The board may also, in its discretion, require successful completion of additional coursework before proceeding with the application process.

History.

I.C., § 54-2918, as added by 2005, ch. 277, § 2, p. 852; am. 2011, ch. 76, § 1, p. 161.

STATUTORY NOTES

Prior Laws.

Former § 54-2918, which comprised 1971, ch. 261, § 18, p. 1050, was repealed by § 1 of S.L. 2005, ch. 277.

Amendments.

The 2011 amendment, by ch. 76, rewrote the section's heading and subsection (1), which formerly read: "**Exception to**

licensure requirements. — (1) Prior to July 1, 2006, the board may deem other education or examination equivalent to licensure requirements, provided that the board is satisfied, and the applicant provides documentation acceptable to the board, that such applicant:

"(a) Has engaged in the practice of audiology or speech-language pathology in this state

prior to July 1, 2005, as provided in administrative rules; and

“(b) Has practiced for not less than five (5) years in the field for which such applicant is applying for licensure under this chapter; and

“(c) Applies for licensure prior to July 1, 2006.”

54-2919. Provisional permit. — The board shall adopt rules providing for a provisional permit to allow a person to engage in the practice of audiology or speech-language pathology while completing either the required postgraduate experience or a comparable experience as part of a doctoral program in audiology as required by this chapter. The board may further provide for a provisional permit to allow a person to engage in fitting and dealing hearing aids pursuant to rules adopted by the board. The holder of a provisional permit may practice only while under the supervision of a person fully licensed under this chapter.

History.

I.C., § 54-2919, as added by 2005, ch. 277, § 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2919, which comprised 1971, ch. 261, § 19, p. 1050; am. 1992, ch. 60, § 16,

p. 178, was repealed by § 1 of S.L. 2005, ch. 277.

54-2920. Denial of application. — An application for licensure that has been denied by the board shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and shall be subject to the provisions of that chapter as well as the administrative rules adopted by the board governing contested cases.

History.

I.C., § 54-2920, as added by 2005, ch. 277, § 2, p. 852.

STATUTORY NOTES

Prior Laws.

Former § 54-2920, which comprised I.C.,

§ 54-2920, as added by 1998, ch. 157, § 1, p. 533, was repealed by § 1 of S.L. 2005, ch. 277.

54-2921. Renewal and reinstatement of licenses — Public display — Inactive license. — (1) All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) Each person licensed pursuant to this chapter shall, on or before the expiration of his or her license, submit an application and pay to the board a license fee for a renewal of the license and shall keep such license posted in his or her office or established place of business at all times.

(3) The board may issue inactive licenses pursuant to rules adopted by the board that may specify the terms and procedures necessary to maintain

an inactive license. The holder of an inactive license shall not engage in any practice defined by this chapter.

History.

I.C., § 54-2921, as added by 2005, ch. 277,
§ 2, p. 852.

54-2922. Reporting of name or address change. — All licensed audiologists, speech-language pathologists, speech-language pathology aides and assistants, and hearing aid dealers and fitters shall report to the board any name change or changes in business and home addresses prior to the expiration of thirty (30) days after the change becomes final.

History.

I.C., § 54-2922, as added by 2005, ch. 277,
§ 2, p. 852.

54-2923. Grounds for disciplinary action and denial. — The following conduct, acts or conditions shall constitute grounds for disciplinary action and grounds for denial of an application for licensure or renewal:

(1) The conviction of any felony or being convicted of any crime which has a bearing on any practice pursuant to this chapter. Conviction, as used in this subsection (1), shall include a finding of verdict of guilt, an admission of guilt, or a plea of nolo contendere or its equivalent. The record of conviction, or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction occurred, shall be conclusive evidence of such conviction;

(2) Obtaining or attempting to obtain a license or registration by fraud, misrepresentation, omission or deceit, or making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession;

(3) When related to the practice for which licensure is required by this chapter, engaging in incompetent or unethical conduct, or practicing or offering to practice beyond the scope of the practice as defined in this chapter, or committing an intentional, negligent, or reckless act or failing to act, or engaging in practice that fails to meet the standard of care provided by licensees in the same or similar communities;

(4) Practicing when physical or mental abilities are impaired by including, but not limited to, the use of controlled substances or other drugs, chemicals or alcohol, or having been adjudged mentally incompetent by a court of competent jurisdiction;

(5) Engaging in practice under a false name or alias or using or attempting to use an invalid license or a license that has been unlawfully purchased, fraudulently obtained, counterfeited or materially altered;

(6) Failing to administer necessary tests utilizing appropriate, established procedures and instrumentation;

(7) Engaging in improper practice or promoting unnecessary devices, treatment, intervention or service for the financial gain of the practitioner or of a third party;

(8) Failing to pay a valid judgment that arose out of any practice

pursuant to this chapter within two (2) months of the date that the judgment became final;

(9) Having had a license revoked or suspended, other disciplinary action taken or an application for licensure or license renewal refused, revoked or suspended by the proper authorities of another state, territory or country, or omitting such information from any application to the board, or failure to divulge such information when requested by the board;

(10) Failing to notify the board of any change of address of a place of business within thirty (30) days of the date of such change;

(11) Failing to meet continuing education requirements as established by the board;

(12) Failing to provide refunds pursuant to the terms of a written contract entered into by the consumer and the licensee;

(13) Failing to properly or adequately supervise any permit holder, support person, or assistant in accordance with this chapter and the administrative rules adopted by the board, or aiding or abetting a person not licensed in this state who directly or indirectly performs activities requiring a license;

(14) Committing any act of sexual contact, misconduct, exploitation or intercourse with a client or former client or related to the licensee's practice, provided:

(a) Consent of the client shall not be a defense;

(b) This subsection (14) shall not apply to sexual contact between a licensee and such licensee's spouse or a person in a domestic relationship with the licensee who is also a client;

(c) A former client means a client for whom the licensee is not at the relevant time providing services but for whom the licensee has provided services within the last twelve (12) months; and

(d) Sexual or romantic relationships with former clients beyond the period of time set forth herein may also be a violation if the licensee uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the client;

(15) Failing to report to the board any act or omission of a licensee, applicant, or any other person, which violates any provision of this chapter;

(16) Interfering with a board investigation or disciplinary proceeding by willful misrepresentation of facts, failure to provide information upon request from the board, or by use of threats or harassment against any client or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action;

(17) Violating any provisions of this chapter, board rules, adopted codes of ethics or other applicable federal or state statutes or rules including, but not limited to, the Idaho consumer protection act, relating directly or indirectly to any practice pursuant to this chapter.

History.

I.C., § 54-2923, as added by 2005, ch. 277,
§ 2, p. 852.

STATUTORY NOTES

Cross References.

Idaho consumer protection act, § 48-601 et seq.

54-2924. Investigations and disciplinary actions — Procedures.

— (1) The board is authorized to institute any investigation, hearing or other legal proceeding necessary to effect compliance with this chapter.

(2) The board or its hearing officer, upon a finding that action is necessary, shall have the power pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner provided by the administrative rules adopted by the board, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where such witness resides or may be found, which shall be served and returned. The board may require a licensee to be examined to determine his or her mental or physical competence when the board has probable cause to believe the licensee is suffering from an impairment that might impede his or her ability to practice competently. The board may accept a voluntary restriction offered by a licensee on a licensee's scope of practice due to impairment of the licensee's competence.

(3) When it is brought to the attention of the board by the written statement of any person that a person licensed under this chapter has done any act or thing in violation of any provision of this chapter, the board shall make an investigation of such person and, if it is determined there is probable cause to institute proceedings against such person, the board shall commence a formal proceeding against the person in accordance with chapter 52, title 67, Idaho Code, and with the administrative rules adopted by the board.

(4) The board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of audiology or speech-language pathology. If an investigation indicates that a person may be practicing audiology or speech-language pathology unlawfully, the board shall inform the person of the alleged violation. The board shall refer all violations of this section made known to it to appropriate prosecuting attorneys whether or not the person ceases the unlawful practice. The board may render assistance to a prosecuting attorney in the prosecution of a case pursuant to this section.

(5) The board may, in the name of the people of the state of Idaho, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this chapter. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this chapter.

History.

I.C., § 54-2924, as added by 2005, ch. 277,
§ 2, p. 852.

54-2925. Disciplinary actions — Penalties. — The board, upon receipt of a recommendation received from the licensure board that a person has violated any provision of this chapter, may take the following disciplinary actions singly or in combination:

- (1) Issue a formal reprimand;
- (2) Require additional education as a requirement for continued practice;
- (3) Impose restrictions and/or conditions as to scope of practice, place of practice, supervision of practice, duration of license status, or type or condition of client served. The board may require a licensee to report regularly to the board on matters regarding the restricted license;
- (4) Suspend a license, the duration of which shall be determined by the board;
- (5) Revoke a license;
- (6) Refuse to issue or renew a license;
- (7) Impose a fine not to exceed one thousand dollars (\$1,000) for each violation of this chapter; or
- (8) Assess costs and attorney's fees against a licensee for any investigation and/or administrative proceeding.

History.

I.C., § 54-2925, as added by 2005, ch. 277,
§ 2, p. 852.

54-2926. Judicial review. — Any person who is aggrieved by any action of the board in denying, refusing to renew, suspending or revoking a license, issuing a censure, imposing any restriction upon a license, or imposing any fine, may seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 54-2926, as added by 2005, ch. 277,
§ 2, p. 852.

54-2927. Unlawful practice — Penalties. — (1) It shall be unlawful for any person to practice or offer to practice audiology, speech-language pathology or hearing aid dealing and fitting in this state, or to use in connection with his or her name or otherwise assume, use or advertise any title or description tending to convey the impression that he or she is an audiologist, speech-language pathologist or hearing aid dealer and fitter, unless such person has been appropriately licensed under the provisions of this chapter.

(2) It shall be unlawful for any person to aid, abet or require another person, licensed or unlicensed, to directly or indirectly violate or evade any provision of this chapter, or to combine or conspire with another person, or permit one's license to be used by another person, or to act as an agent, partner, associate or otherwise, of another person with the intent to violate or evade the provisions of this chapter.

(3) A violation of the provisions of this chapter shall constitute a misdemeanor and any person convicted thereof shall be fined an amount not to exceed one thousand dollars (\$1,000), or imprisoned in a county jail for a period not to exceed six (6) months, or shall be punished by both such fine and imprisonment.

History.

I.C., § 54-2927, as added by 2005, ch. 277,
§ 2, p. 852; am. 2011, ch. 76, § 2, p. 161.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 76, inserted
“or hearing aid dealing and fitting,” “or hear-

ing aid dealer and fitter,” and “appropriately”
in subsection (1).

CHAPTER 30

**LANDSCAPE ARCHITECT REGISTRATION AND
LICENSING ACT**

SECTION.

54-3001. Short title.

54-3002. Definitions.

54-3003. Qualifications — Examinations —
Board — Licenses — Fees —
Endorsement — Exemptions

SECTION.

— Individuals, partnerships
and corporations — Restriction
on use of name — Seal.

54-3004. Disciplinary proceedings.

54-3005. Violations and penalties.

54-3001. Short title. — This act shall be known and cited as the
“Landscape Architect Registration and Licensing Act.”

History.

1972, ch. 390, § 1, p. 1123.

STATUTORY NOTES

Cross References.

Architects, § 54-301 et seq.

390, which is compiled as §§ 54-3001 to 54-
3005.

Compiler's Notes.

The term “this act” refers to S.L. 1972, ch.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Occupations,
Trades, and Professions, § 62.

C.J.S. — 6 C.J.S., Architects, § 1 et seq.

54-3002. Definitions. — As used in this chapter:

(1) “Landscape architect” means a person who holds a license to practice landscape architecture in the state of Idaho under the authority of this chapter.

(2) “Landscape architecture” means the performance of professional services such as consultations, investigation, reconnaissance, research, planning, design or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that the

dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, approaches to buildings, structures, facilities or other improvements, natural drainage and the consideration and determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards, but shall not include the application of geological principles. This practice shall include the location, design and arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and features as are incidental and necessary to the purposes outlined herein, but shall not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of cadastral surveys or final land plats for official recording or approval. It involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites.

(3) "Board" means the Idaho state board of landscape architects.

(4) "Department" means the department of self-governing agencies of the state of Idaho.

(5) "Landscape architect-in-training" means a person who has met the qualifications of section 54-3003(2), Idaho Code, and is working under the supervision of a licensed landscape architect. A landscape architect-in-training shall use the title "landscape architect-in-training" in accordance with board rule.

(6) "Public" means any person, firm, corporation, partnership, company, government agency, institution or any other entity recognized by law.

(7) "Rules of professional responsibility" means those rules, if any, promulgated by the board.

History.

1972, ch. 390, § 2, p. 771; am. 1974, ch. 13,
§ 189, p. 138; am. 2003, ch. 225, § 1, p. 578.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

54-3003. Qualifications — Examinations — Board — Licenses — Fees — Endorsement — Exemptions — Individuals, partnerships and corporations — Restriction on use of name — Seal. — (1) Application and practice. In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture, shall be required to submit evidence of qualifications to practice and shall be issued a license under the provisions of this chapter.

(2) Qualifications. For licensure as a landscape architect, evidence must be submitted to the board that the applicant:

- (a) Is eighteen (18) years of age or older;
- (b) Has graduated from a college or school of landscape architecture approved by the board. In lieu of graduation from an approved college or school of landscape architecture, an applicant may present evidence of at least eight (8) years of actual, practical experience in landscape architecture of a grade and character satisfactory to the board, as established by rule, that the applicant is competent to practice landscape architecture; and

(c) Has successfully passed an examination approved by the board.

(3) Examinations. The board shall adopt rules covering the subjects and scope of the examinations. Every applicant for license as a landscape architect shall be required, in addition to all other requirements, to establish by written examination his competency to plan, design, specify and supervise the installation and construction of landscape architectural projects. Each written examination may be supplemented by such oral examinations as the board may determine.

(4) The board.

(a) There is hereby created in the department of self-governing agencies an Idaho state board of landscape architects. The board shall consist of three (3) landscape architects. Members of the board shall be appointed by the governor and must be residents of this state, have the qualifications of landscape architects required by this chapter, and after the initial board is organized be licensed hereunder. The terms of the members of the board shall be for four (4) years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment in like manner for the unexpired term.

(b) The board shall have, in addition to the powers set forth elsewhere in this chapter, the following powers and duties:

- (i) To authorize, by written agreement, the bureau of occupational licenses to act as agent in its interest, and to make such rules as shall be necessary in the performance of its duties;
- (ii) To adopt rules of professional responsibility;
- (iii) To adopt rules requiring the completion of continuing education by each licensee on an annual basis;
- (iv) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding against a licensee under this chapter, to administer oaths, take depositions of witnesses within or outside of the state in the manner provided by law in civil cases, and to apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records and papers as the board deems necessary in a disciplinary proceeding against a licensee. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid in the same manner as other board expenses. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or refusal of any witness to testify to any matter about which he may lawfully be interrogated, it shall be

the duty of any district court in this state on application by the board to compel compliance with the subpoena by conducting proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

(c) The board shall elect, at its first meeting of every calendar year, a chairman from its members. In carrying out the provisions of this chapter, all members of the board shall be compensated as provided by section 59-509(m), Idaho Code. Payment of travel and other expenses shall be made from the occupational licenses fund [account].

(5) Renewal and reinstatement — Revenue.

(a) All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(b) Amounts. The amount of fees shall be as determined by the board within the following stated limits:

(i) The application fee not to exceed one hundred dollars (\$100).

(ii) The fee for examination to be established by board rule not to exceed that charged by the council of landscape architectural registration board [boards] plus a fifty dollar (\$50.00) processing fee. The board may recover the actual costs associated with an applicant's review of a failed examination.

(iii) The fee for an original license and the annual license fee not to exceed two hundred dollars (\$200).

(c) Refund. Fees shall be nonrefundable.

(d) Deposit. All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred by the board under the provisions of this chapter shall be a charge against and paid from said fund [account] for such purposes, and the funds collected hereunder shall be immediately available for the administration of this chapter, the provisions of any other law notwithstanding. In no instance will the occupational licenses fund [account] be obligated to pay any claims that in aggregate with claims already paid exceed the income to the occupational licenses fund [account] which has been derived by the application of this chapter.

(e) Appropriation. The money paid into the occupational licenses fund [account] is continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and in carrying out and enforcing the provisions of this chapter.

(6) Endorsement provisions. The board may approve for licensure:

(a) An individual with a current council of landscape architecture [architectural] registration board [boards] (CLARB) certification; or

(b) With limited examination an applicant who is legally registered or licensed as a landscape architect in any other state or country whose

requirements for registration or licensure are at least substantially equivalent to the requirements of this state.

(7) Exemptions.

(a) None of the provisions of this chapter shall prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control or supervision of their employers.

(b) None of the provisions of this chapter shall apply to the business conducted in this state by any land use planner, horticulturist, nurseryman, or landscape nurseryman, gardener, landscape gardener, landscape designer, or landscape contractor, as these terms are generally used, or any other person, including, but not limited to, their right to plan and supervise in connection therewith, except that no such person shall use the designation "landscape architect," "landscape architecture," or any description tending to convey the impression that they are a licensed landscape architect unless they are registered as provided in this chapter.

(c) This chapter shall not apply to architects, professional engineers, geologists, and land surveyors, licensed to practice their respective professions.

(8) This chapter applies to individuals only.

(a) All licenses shall be issued to individuals only but nothing contained in this chapter shall prevent a duly licensed landscape architect from rendering professional services for a corporation, firm, partnership or association.

(b) Partners. Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture or to provide allied professional services as defined in section 30-1303, Idaho Code. Subject to this requirement, a partnership of landscape architects may use a partnership name if such name consists of:

(i) The names of two (2) or more landscape architects.

(ii) The names of one (1) or more landscape architects and one (1) or more professional engineers or architects.

(c) Any person applying to the official of any county or city for a business license to practice landscape architecture shall at the time of such application exhibit to such official satisfactory evidence that such applicant possesses a current Idaho license. The business license shall not be granted until such evidence is presented, any contrary provision of any special act or general act notwithstanding.

(9) Qualifications for practice — Seal:

(a) No person shall use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that the person is a landscape architect, or practicing landscape architecture, unless such person is a licensed landscape architect. Every holder of a license shall display it in the principal office, place of business or place of employment.

(b) Every landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Idaho," and such other words or figures as the board may deem necessary and prescribe.

(i) The seal may be a rubber stamp or an electronically applied seal. Whenever the seal is applied, the licensee's written signature and the date shall be adjacent to or across the seal. The seal, signature and date shall be placed on all final reports, drawings and title pages of specifications, design information and calculations. Whenever presented to a client or to the public, such documents that are not final and do not contain a seal, signature and date, shall be clearly marked as "preliminary," "draft," "not for construction" or similar words to distinguish the documents from a finished product.

(ii) The application of the licensee's seal, signature and the date shall constitute certification that the work thereon was prepared by such landscape architect or under the supervision of such landscape architect. Each plan or drawing sheet shall be sealed and signed by the licensee or the licensee's agent responsible for each sheet. The principal landscape architect in charge shall sign and seal the title or first sheet. Copies of electronically produced documents listed in paragraph (b)(i) of this subsection that are distributed for informational use, such as for bidding purposes or working copies, may be issued with the licensee's seal and a notice that the original document is on file with the licensee's signature and date. The words "original signed by:" and "date signed:" shall be placed adjacent to or across the seal of the electronic original. The storage location of the original documents shall also be provided. Only the title page of reports, specifications and like documents need bear the seal and signature of the licensee and the date.

(iii) Nothing contained herein shall be construed to permit a landscape architect to practice as a licensed architect, a licensed professional engineer or a licensed land surveyor as these professions are defined by Idaho Code; provided however, nothing contained herein shall be construed to prevent a landscape architect from practicing landscape architecture.

History.

1972, ch. 390, § 3, p. 771; am. 1974, ch. 13, § 190, p. 138; am. 1980, ch. 247, § 74, p. 582; am. 1986, ch. 53, § 1, p. 156; am. 1989, ch. 56,

§ 1, p. 74; am. 1993, ch. 204, § 1, p. 560; am. 1996, ch. 66, § 7, p. 198; am. 2003, ch. 21, § 14, p. 77; am. 2003, ch. 225, § 2, p. 578; am. 2006, ch. 128, § 1, p. 371.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies, § 67-2601 et seq.

Amendments.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 21, § 14, in subsection (e) (now designated as subsection (5)) rewrote the introductory language and first paragraph in a manner identical to ch. 277.

The 2003 amendment, by ch. 277, § 2, rewrote the section.

The 2006 amendment, by ch. 128, in subsection (2)(b), substituted "Has graduated" for "Has, before admission to the examination" and "an applicant may present" for "and the practical experience in addition thereto, an applicant may be admitted to the examination upon presenting"; added subsection (2)(c); in subsection (3), deleted "Examinations for the license shall be held by the board at least once each year, provided that applications shall have been received during the time announced" at the beginning and substituted "examinations" for "examination at the times designated"; deleted "— renewal and reinstatement" from the end of heading in

subsection (5); in subsection (5)(b)(ii), substituted "fifty dollar (\$50.00)" for "twenty-five dollar (\$25.00)" and inserted "The board may recover the actual costs associated with an applicant's review of a failed examination"; and substituted "two hundred dollars (\$200)" for "one hundred twenty-five dollars (\$125)" in subsection (5)(b)(iii).

Compiler's Notes.

The bracketed insertions in paragraphs

(4)(c) and (5)(d) were added by the compiler to correct the name of the referenced account. See § 67-2605.

The bracketed insertions in paragraphs (5)(b)(ii) and (6)(a) were inserted by the compiler to supply the correct, full name of the referenced organization. See <http://www.clarb.org>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

54-3004. Disciplinary proceedings. — Upon giving at least twenty (20) days' notice of its intended action, and affording the holder of a license an opportunity for a hearing to be conducted under the provisions of chapter 52, title 67, Idaho Code, the board may refuse to issue, refuse to renew, revoke or suspend the license of any landscape architect upon the following grounds:

- (1) Fraud or deception in the application for or the procurement of a license or in passing any of the examinations prescribed by this chapter;
- (2) Conviction of a felony by a court of competent jurisdiction;
- (3) Gross negligence in the practice of landscape architecture;
- (4) Fraud or deceit in the practice of landscape architecture;
- (5) Willful violation of any of the provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter.

The board may reinstate any revoked or suspended license upon such terms as it may impose.

An appeal of any order of the board may be taken to the district court of either Ada county or the county in which the applicant or licensee resides, in accordance with chapter 52, title 67, Idaho Code.

History.

1972, ch. 390, § 4, p. 771; am. 1993, ch. 216, § 87, p. 587; am. 2003, ch. 225, § 3, p. 578.

54-3005. Violations and penalties. — (1) It shall be a violation for any person to:

- (a) Offer to practice or represent oneself as entitled to practice landscape architecture, unless duly licensed under this chapter;
- (b) Attempt to use the license of another;
- (c) Give false or forged evidence to the board or any member thereof in obtaining a license;
- (d) Falsely impersonate any other practitioner, of like or different name;
- (e) Otherwise violate any of the provisions of this chapter.

Such violation shall be a misdemeanor. Each act under this section shall be treated as a separate offense.

(2) Prosecution of violations. All violations of this chapter when reported to the board and duly substantiated by affidavits or other satisfactory evidence shall be investigated by the board, and if the report is found to be true and the evidence substantiated, the board shall report such violations to the county attorney of the county in which the violation occurred and request prompt prosecution.

History.

1972, ch. 390, § 5, p. 771; am. 1974, ch. 13, § 191, p. 138; am. 2003, ch. 225, § 4, p. 578.

STATUTORY NOTES**Cross References.**

Penalty for misdemeanor where none prescribed, § 18-317.

Compiler's Notes.

Section 6 of S.L. 1972, ch. 390, read: "Notwithstanding any other provisions of this chapter, any person, who submits evidence satisfactory to the board that he meets the requirements set forth in section 3(b) [§ 54-3003(2)] of this act, and gives satisfactory evidence to the board that he has been regularly engaged in the practice of landscape architecture as defined in this chapter, shall be entitled to receive, without an examination, a certificate to practice landscape architecture, if he files an application therefor

accompanied by the fee for an original certificate on or before January 1, 1973."

Section 7 of S.L. 1972, ch. 390, read: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected."

Effective Dates.

Section 8 of S.L. 1972, ch. 390 provided the act should take force and effect on and after July 1, 1972.

Section 194 of S.L. 1974, ch. 13 provided the act should be in full force and effect on and after July 1, 1974.

CHAPTER 31**CERTIFIED SHORTHAND REPORTERS ACT****SECTION.**

- 54-3101. Short title — Intent.
- 54-3102. Definitions.
- 54-3103. Certification required.
- 54-3104. Exceptions to certification requirement.
- 54-3105. Certified shorthand reporters board — Members — Term — Appointment.
- 54-3106. Organization of board — Meetings — Quorum — Compensation.
- 54-3107. Powers and duties.
- 54-3108. Qualifications — Required examination — Renewal of certificates.

SECTION.

- 54-3109. Qualifications for temporary permit — Renewal.
- 54-3110. Fees.
- 54-3111. Examinations.
- 54-3112. Suspension and revocation of temporary permit or certificate.
- 54-3113. Investigation of violations — Hearing.
- 54-3114. Judicial review of board action.
- 54-3115. Reinstatement of certification.
- 54-3116. Renewal within five years. [Repealed.]
- 54-3117. Finances.
- 54-3118. Violation a misdemeanor — Penalty.

54-3101. Short title — Intent. — (1) This chapter shall be known as the "Idaho Certified Shorthand Reporters Act."

(2) In order to safeguard life, health and property, and to promote the public welfare, the practice of shorthand reporting in this state is hereby declared to be subject to regulation in the public interest.

History.

1974, ch. 110, § 2, p. 1255; am. 2008, ch. 68, § 1, p. 176.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 68, in the

section catchline, added "intent"; and added the subsection (1) designation to existing pro-

visions and added subsection (2).

Compiler's Notes.

Section 1 of S.L. 1974, ch. 110, reads: "This statute is enacted to promote competency and excellence in reporting and transcribing pro-

ceedings in the judicial system in the state of Idaho and to insure the utmost accuracy in such reporting and transcribing by providing minimum requirements for licensing and certifying reporters of such proceedings."

RESEARCH REFERENCES

C.J.S. — 82 C.J.S., Stenographers, § 3.

54-3102. Definitions. — Unless otherwise expressly stated, when used in this chapter the following words and phrases shall have the following meanings:

(1) "Shorthand reporting" means the making of written symbols or abbreviations in shorthand or machine shorthand writing of a verbatim record of any oral court proceedings, deposition, or proceedings before any grand jury, referee, or court commissioner, contemporaneous with the event.

(2) "Certified shorthand reporter" or its abbreviation "C.S.R." means any person holding a valid regular or temporary certificate as a shorthand reporter as provided in this chapter.

(3) "Board" means the state certified shorthand reporters board.

(4) "Official court reporter" means the official court reporter of a federal district court in the state or the district court reporter of any state district court, but does not include any reporter of the magistrates division of any state district court.

(5) "Freelance reporter" means any shorthand reporter engaged in the practice of shorthand reporting as defined in this chapter who is not an official court reporter.

(6) "Available" means physically present at the time and place indicated or that the person could be physically present at the time and place indicated if a specific request was made.

History.

1974, ch. 110, § 3, p. 1255; am. 2005, ch. 84, § 1, p. 299; am. 2008, ch. 68, § 2, p. 176.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, redesignated former alphabetical subsection design-

nations numerically; and throughout the section, substituted "chapter" for "act."

54-3103. Certification required. — Except as expressly provided in this chapter, no person shall engage in the practice of shorthand reporting or be appointed to the position of district court reporter in any state district court, or before any master or referee, or as reporter for any board or commission of the state requiring shorthand reporting for any hearing, proceeding or trial unless such person is a certified shorthand reporter as defined in this chapter; provided that any district court reporter, or any reporter before a master or referee shall also possess such additional qualifications as the supreme court may prescribe by rule.

No person shall use the title of certified shorthand reporter or its abbreviations C.S.R. or CSR, or any similar words or letters in conjunction with such person's name to indicate the possession of qualifications to practice in this state as a certified shorthand reporter without having a valid temporary or regular certificate issued pursuant to this chapter and not revoked or suspended. A certificate to practice shorthand reporting shall not be transferable.

History.

1974, ch. 110, § 4, p. 1255; am. 2008, ch. 68, § 3, p. 176.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 68, deleted subsection designations; and in the last paragraph, substituted "to indicate the possession

of qualifications to practice" for "to indicate that he is qualified to practice," and added the last sentence.

54-3104. Exceptions to certification requirement. — The provisions of this chapter shall not apply to and shall not be construed to prohibit:

(1) The appointment of a state district court reporter who is not a certified shorthand reporter on a temporary basis in accordance with and upon condition as the supreme court may prescribe by rule. Provided, in the event a person who has not obtained regular certification as a certified shorthand reporter is appointed as district court reporter, such reporter must make application for regular certification under this chapter within thirty (30) days of such appointment. If the reporter fails to obtain regular certification as a certified shorthand reporter by the second subsequent consecutive examination date by reason of his failure to pass the necessary examination, or otherwise, then such person shall be removed as district court reporter and shall not be eligible for reappointment until successfully obtaining a regular certificate as a certified shorthand reporter under this chapter.

(2) The employment and reporting of personnel in the magistrates division of any district court of the state who rely principally upon electronic tape recorders, stenomask, or similar mechanical contrivances to make a record of a hearing, trial or proceeding.

(3) The taking of an oral deposition by shorthand reporting by a person not a certified shorthand reporter if the party to the action or such party's attorney certifies at the commencement of the deposition that no certified shorthand reporter was available for reporting the deposition.

(4) The employment of salaried, full-time employees of a prosecuting attorney or of any department or agency of the state to act as a hearing reporter for such official, department or agency.

History.

1974, ch. 110, § 5, p. 1255; am. 2007, ch. 3, § 1, p. 4; am. 2008, ch. 68, § 4, p. 177.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 3, redesignated former subsections (a) through (d) as present subsections (1) through (4); substituted “this chapter” for “this act” in the introductory paragraph and twice in subsection (1); substituted “a person who has not obtained regular certification as a certified” for “a person not a certified” in the second sen-

tence in subsection (1); and inserted “regular” preceding “certification as a certified shorthand reporter” in the third sentence in subsection (1).

The 2008 amendment, by ch. 68, substituted “until successfully obtaining” for “until he obtains” in the last sentence in subsection (1).

54-3105. Certified shorthand reporters board — Members — Term — Appointment. — (1) There is hereby created a state certified shorthand reporters board of the state of Idaho which shall consist of five (5) members. Three (3) members of the board shall be persons who have been nominated by the Idaho shorthand reporters association. Nominees must possess a current license as a certified shorthand reporter and have had at least five (5) years continuous experience immediately prior to their nomination as a freelance shorthand reporter or official court reporter. One (1) other member of the board shall be an Idaho district judge nominated by the Idaho supreme court. The other member of the board shall be a member of the Idaho state bar and nominated by the Idaho state bar association. At least two (2) nominees for each position must be nominated by the nominating body.

(2) The members of the board shall hold office for terms of three (3) years each. Appointments to fill vacancies shall be for the unexpired term of such vacancies.

(3) Appointments to the board shall be made by the governor from the nominees set forth in this section and each member of the board shall hold office for the specified term and until a successor is duly appointed by the governor.

History.

1974, ch. 110, § 6, p. 1255; am. 2008, ch. 68, § 5, p. 177.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, redesignated former alphabetical subsection designations numerically; in subsection (1), added “Nominees must possess a current license as a certified shorthand reporter and”; in subsection (2), deleted the former second and third sentences pertaining to appointment of members; and in subsection (3), substituted “the specified term and until a successor is duly

appointed” for “his term and until his successor is duly appointed.”

Compiler’s Notes.

Nominations for three members of this board now originate with the Idaho court reporters association. See <http://www.idahocra.org>.

For more on the Idaho state bar association, see <http://www.isb.idaho.gov>.

54-3106. Organization of board — Meetings — Quorum — Compensation. — (1) The board shall organize by the election of one (1) of its members as chairman and one (1) of its members as vice chairman. Officers of the board shall be elected annually for terms of one (1) year at a regular

meeting of the board, but the same person may not hold the office of chairman more than three (3) years in succession.

(2) The board shall meet at least annually to conduct its business and perform its duties, and shall meet at such other times as designated by the chairman or by request of two (2) or more members of the board.

(3) A majority of the board shall constitute a quorum for all purposes and the majority vote of the members voting shall constitute the action of the board.

(4) A complete record of all board proceedings shall be maintained.

(5) Members of the board shall be compensated as provided in section 59-509(b), Idaho Code.

History.

1974, ch. 110, § 7, p. 1255; am. 1980, ch. 247, § 75, p. 582; am. 2008, ch. 68, § 6, p. 178.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, redesignated former alphabetical subsection designations numerically; in subsections (1) and (2), substituted "chairman" for "president"; in subsection (1), substituted "chairman and one (1) of its members as vice chairman" for "president, one (1) of its members as secretary and one (1) of its members as treasurer; provided

that the offices of secretary and treasurer may be held by one (1) person" in the first sentence, and in the last sentence, inserted "annually" and substituted "at a regular meeting" for "at the annual meeting"; and rewrote subsection (4), which formerly read: "The secretary of the board shall keep a complete record of all of its proceedings."

54-3107. Powers and duties. — The state certified shorthand reporters board shall have the following powers and duties:

(1) To determine the qualifications of persons applying for certificates and the renewal of a certificate under this chapter.

(2) To prescribe, administer, and determine a passing grade for the examination of applicants applying for certificates under this chapter.

(3) To collect the fees and charges prescribed by this chapter.

(4) To execute and issue temporary permits and certified shorthand reporters certificates under the conditions prescribed in this chapter.

(5) To refuse to issue, refuse to renew, revoke or suspend or otherwise discipline any certificate or permit upon the grounds and in the manner prescribed by this chapter.

(6) To make rules to carry out the intent and purposes of this chapter.

(7) The board may, by written agreement, authorize the bureau of occupational licenses as its agent to act in its interest.

History.

1974, ch. 110, § 8, p. 1255; am. 2008, ch. 68, § 7, p. 178.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2008 amendment, by ch. 68, redesignated former alphabetical subsection designations numerically; in subsection (1), inserted "and the renewal of a certificate"; in subsection (4), inserted "permits," and deleted "regular" preceding "certified"; rewrote sub-

section (4), inserted "permits," and deleted "regular" preceding "certified"; rewrote sub-

section (5), which formerly read: "To revoke or suspend regular or temporary certified shorthand reporters certificates upon the grounds and in the manner prescribed by this act"; in

subsection (6), deleted "and regulations" following "rules," and substituted "chapter" for "act"; and added subsection (7).

54-3108. Qualifications — Required examination — Renewal of certificates. — (1) Applicants for certification must take and pass the Idaho certified shorthand reporter examination. Alternatively, applicants for certification must provide proof, satisfactory to the board, of having passed one (1) of the following examinations within the two (2) years prior to the date of the application:

- (a) The registered professional reporter (RPR) examination;
- (b) The registered merit reporter (RMR) examination;
- (c) The registered diplomate reporter (RDR) examination; or
- (d) The certified realtime reporter (CRR) examination.

(2) Any applicant who is a lawful resident of the United States of good moral character, having graduated from an accredited high school or having had an equivalent education, shall be entitled to receive a certificate as a certified shorthand reporter upon payment of the fees required by this chapter. All applications shall be in such form as prescribed by the board and filed with the board at least thirty (30) days prior to the announced date of the reporters examination. The board in its discretion may make such additional investigation and inquiry, or require additional information from the applicant, as it shall deem necessary in determining the qualifications of the applicant. The board shall thereupon notify the applicant as to whether their application to take the reporters examination is accepted.

(3) All certified shorthand reporter certificates shall be issued for a period of one (1) year and shall be renewable upon payment of a renewal fee. The renewal and reinstatement of all certificates issued under the provisions of this chapter shall be in accordance with section 67-2614, Idaho Code.

History.

1974, ch. 110, § 9, p. 1255; am. 1987, ch. 72, § 1, p. 141; am. 1992, ch. 191, § 1, p. 595; am.

2005, ch. 84, § 2, p. 299; am. 2008, ch. 68, § 8, p. 179.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, in the first sentence in subsection (2), substituted "lawful resident" for "citizen" and "chapter" for "act"; and in subsection (3), in the first sentence, deleted "regular" preceding "certified" and "prescribed in section 54-3110, Idaho Code, for an additional period of one (1) year" from the end, and added the last sentence.

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

For more on certification and the examinations listed in subsection (a), see <http://www.ncra.org/certifications>.

54-3109. Qualifications for temporary permit — Renewal. — (1) A temporary certified shorthand reporter permit may be issued to an applicant who pays the required fees and who:

- (a) Is of good moral character; and

(b) Has graduated from an accredited high school or has an equivalent education; and

(i) Is currently licensed in good standing in another state as a certified shorthand reporter, or its equivalent, or has otherwise demonstrated proficiency by a certificate from an agency of another state; or

(ii) Has graduated from a national court reporters association (NCRA) approved school.

(2) The application shall be upon such forms as are prescribed by the board and the board may in its discretion make additional investigation and inquiry, or require further information from the applicant, as it shall deem necessary in order to make a determination of the qualifications of the applicant.

(3) All temporary certified shorthand reporter permits shall be issued for a period of one (1) year and may be renewable for a single additional period of one (1) year upon the payment of required fees and upon a showing of just cause.

History.

1974, ch. 110, § 10, p. 1255; am. 1987, ch. 72, § 2, p. 141; am. 1992, ch. 191, § 2, p. 595;

am. 2002, ch. 83, § 1, p. 186; am. 2005, ch. 84, § 3, p. 299; am. 2008, ch. 68, § 9, p. 179.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, in the section catchline, substituted “permit” for “certification”; in the introductory paragraph in subsection (1), substituted “permit may be issued to an applicant who pays the required fees and who” for “certificate may be issued to an applicant who pays the fees required by the provisions of this chapter”; and in subsec-

tion (3), substituted “permits” for “certificates” and “required fees” for “the fees prescribed in section 54-3110, Idaho Code.”

Compiler’s Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

For more on the national court reporters associations, see <http://www.ncra.org>.

54-3110. Fees. — The board shall be entitled to charge and collect the following fees:

(1) The sum of fifty dollars (\$50.00) as an application fee for any certificate or temporary permit.

(2) The sum of fifty dollars (\$50.00) as an examination fee for the administration of the reporters examination to any applicant.

(3) A sum not to exceed seventy-five dollars (\$75.00) as a renewal fee for any certificate or temporary permit.

(4) A sum not to exceed one hundred dollars (\$100) as a reinstatement fee for any application for reinstatement of a temporary permit or certificate which has been revoked or suspended.

(5) The failure to renew a certificate annually, prior to expiration, shall not deprive such person of the right of renewal or reinstatement in accordance with section 67-2614, Idaho Code.

(6) A sum not to exceed twenty dollars (\$20.00) as a fee for examination preparation materials.

History.

1974, ch. 110, § 11, p. 1255; am. 1987, ch. 72, § 3, p. 141; am. 1992, ch. 191, § 3, p. 595; am. 2003, ch. 88, § 1, p. 269; am. 2005, ch. 84, § 4, p. 299; am. 2008, ch. 68, § 10, p. 180.

STATUTORY NOTES**Cross References.**

Military exemption from fees, § 67-2602A.

Amendments.

The 2008 amendment, by ch. 68, redesignated former alphabetical subsection designations numerically; in subsection (1), inserted “certificate,” and substituted “permit”

for “or regular certificate”; in subsection (3), substituted “any certificate or temporary permit” for “any regular or temporary certificate”; in subsection (4), substituted “temporary permit or certificate” for “temporary or regular certificate”; and rewrote subsection (5), deleting language pertaining to the fee to be paid for renewal of a certificate.

54-3111. Examinations. — The board shall conduct the Idaho certified shorthand reporter examination at least once every year and may conduct additional examinations. The board shall give public notice of the time and place of each examination at least one hundred twenty (120) days in advance of the date set for the examination and any person desiring to take the reporters examination must file his application with the board at least thirty (30) days prior to the date of the examination.

History.

1974, ch. 110, § 12, p. 1255; am. 2005, ch. 84, § 5, p. 299; am. 2008, ch. 68, § 11, p. 180.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 68, in the last

sentence, substituted the first occurrence of “board” for “secretary.”

54-3112. Suspension and revocation of temporary permit or certificate. — The board may refuse to issue, refuse to renew, suspend, revoke, or otherwise sanction a temporary permit or certified shorthand reporter certificate for any of the following reasons:

(1) Conviction of a felony or a misdemeanor involving moral turpitude. The record of conviction, or a certified copy thereof, shall be prima facie evidence of conviction in such cases.

(2) Fraud or misrepresentation resorted to in obtaining a certificate thereunder.

(3) Fraud, dishonesty, corruption, willful violation of duty, gross incompetence in practice or unprofessional conduct in performing services as a certified shorthand reporter.

(4) Persistent failure to perform duties.

(5) Any physical or mental disability materially interfering with the performance of duties.

(6) The violation of the provisions of this chapter or rules, or any ethical codes as may be adopted by the board.

History.

1974, ch. 110, § 13, p. 1255; am. 1987, ch. 72, § 4, p. 141; am. 2008, ch. 68, § 12, p. 181.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, in the section catchline, substituted “temporary permit or certificate” for “certification”; rewrote the introductory paragraph, which formerly read: “A temporary or regular certified short-

hand reporter certificate may be suspended or revoked for any of the following reasons:”; redesignated former alphabetical subsection designations numerically; and added subsection (6).

54-3113. Investigation of violations — Hearing. — The board shall, upon a verified complaint in writing by any member of the board or by a certified shorthand reporter or any person claiming to have been injured or defrauded, investigate the actions of any certified shorthand reporter alleged to have committed a violation of this chapter or any of the grounds for revocation or suspension of a certificate. For the purpose of such investigations and hearings, each member of the board is empowered to administer oaths and affirmations, subpoena witnesses, and hear and receive evidence anywhere in the state. Upon conclusion of the hearings, the board shall determine by majority vote whether the certificate of the certified shorthand reporter should be revoked or suspended for a stated period of time, or whether such disciplinary action short of suspension or revocation should be imposed, including, but not limited to, conditional probationary periods and the imposition of fines and costs, or whether the complaint should be dismissed. The proceedings and hearings pursuant to this section shall be governed by chapter 52, title 67, Idaho Code.

History.

1974, ch. 110, § 14, p. 1255; am. 1997, ch. 88, § 1, p. 213; am. 2008, ch. 68, § 13, p. 181.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, in the first sentence, substituted “chapter” for “act”; and

in the last sentence, substituted “pursuant to this section” for “under this paragraph.”

54-3114. Judicial review of board action. — Any person who shall be aggrieved by any action of the board in denying, refusing to renew, suspending, revoking or otherwise disciplining a certified shorthand reporter certificate may seek judicial review thereof as provided in chapter 52, title 67, Idaho Code. A copy of the petition for judicial review shall be served upon the board and upon the board’s administrative legal counsel who shall represent the board in such appeal.

History.

1974, ch. 110, § 19, p. 1255; am. 1993, ch.

216, § 88, p. 587; am. 2008, ch. 68, § 14, p. 181.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, in the first sentence, inserted “or otherwise disciplining”; and in the last sentence, deleted “president or

secretary of the” preceding the first occurrence of “board,” and substituted “board’s administrative legal counsel” for “attorney general of the state of Idaho.”

54-3115. Reinstatement of certification. — A temporary permit or certified shorthand reporter certificate which has been revoked or suspended, may be reinstated at the discretion of the board upon a finding that the grounds for suspension or revocation no longer exist or that the reporter has made adequate restitution for any damages caused by any misconduct and has demonstrated good moral character sufficient to indicate that the misconduct will not recur. An application for reinstatement shall be in such form as prescribed by the board by rule, and shall be accompanied by an application fee and a reinstatement fee. In the event the certificate was originally suspended or revoked for incompetence, the applicant for reinstatement shall also be required to take and pass the reporters examination and pay an examination fee.

History.

1974, ch. 110, § 15, p. 1255; am. 2008, ch. 68, § 15, p. 182.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, in the first sentence, substituted “temporary permit or certified shorthand” for “temporary or regular

certified shorthand” and “caused by any misconduct and has demonstrated” for “caused by his actions and that he has demonstrated.”

54-3116. Renewal within five years. [Repealed.]

STATUTORY NOTES

Compiler’s Notes.

This section, which comprised 1974, ch.

110, § 16, p. 1255, was repealed by S.L. 2008, ch. 68, § 16.

54-3117. Finances. — All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account].

History.

1974, ch. 110, § 17, p. 1255; am. 2008, ch. 68, § 17, p. 182.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2008 amendment, by ch. 68, rewrote the section catchline, which formerly read: “Certified shorthand reporters fund”; and rewrote the section, which formerly read: “All fees collected under the provisions of this act shall be deposited at least monthly with the state treasurer and shall constitute a special fund known as the state certified shorthand

reporters fund. All moneys received by said special fund are hereby appropriated for the purpose of the administration of this act, and no moneys received in said special fund shall be disbursed by the state treasurer unless the voucher for such disbursement contains the certificate of the treasurer of the state certified shorthand reporters board that such voucher is for an expense incurred in the administration of this act.”

Compiler’s Notes.

The bracketed insertions were added by the

compiler to correct the name of the referenced account. See § 67-2605.

54-3118. Violation a misdemeanor — Penalty. — Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than fifty dollars (\$50.00) and not exceeding two hundred dollars (\$200) for each offense, or imprisonment in the county jail for a term of not more than ninety (90) days, or by both such fine and imprisonment.

History.

1974, ch. 110, § 18, p. 1255; am. 2008, ch. 68, § 18, p. 182.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 68, substituted “chapter” for “act.”

Compiler’s Notes.

Section 20 of S.L. 1974, ch. 110, read: “If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other

provisions or applications of the act which can be given effect without invalid provision or application, and to this end the provisions of this act are severable.”

Effective Dates.

Section 21 of S.L. 1974, ch. 110 provided the act should be in full force and effect on or after July 1, 1974.

CHAPTER 32

SOCIAL WORK LICENSING ACT

SECTION.

54-3201. Purpose — Legislative intent.

54-3202. Definitions.

54-3203. State board of social work examiners — Created — Appointments — Terms.

54-3204. Board — Powers and duties.

54-3205. Disposition of receipts — Expenses — Refund.

54-3206. Licensing — Qualifications.

54-3207. Private or independent practice of social work.

54-3208. Endorsement.

54-3209. Fees — Licensing — Duration of licenses.

54-3210. Code of professional conduct.

SECTION.

54-3211. Refusal to issue, refusal to renew, suspension or revocation of license — Unprofessional conduct.

54-3212. Revocation or suspension of licenses — Hearings — Taking testimony — Appeal.

54-3213. Privileged communications.

54-3214. License required — Representation to public.

54-3215. Exemptions.

54-3216. Attorney general — Prosecuting attorneys.

54-3217. Violations of act a misdemeanor.

54-3201. Purpose — Legislative intent. — Recognizing that the profession of social work involves the application of a special knowledge of social resources, social systems, human capabilities, and the part that conscious and unconscious motivation plays in determining behavior, and further recognizing that social work profoundly affects the lives of people of the state of Idaho, it is the legislative intent and purpose of this act to protect the public by setting standards of qualification, education, training and experience, and professional competence for those who engage in the practice of social work.

History.

I.C., § 54-3201, as added by 1976, ch. 213,
§ 1, p. 776.

STATUTORY NOTES**Compiler's Notes.**

The words "this act" refer to S.L. 1976, ch.

213, which is compiled as §§ 54-3201 to 54-3214, 54-3216, 54-3217, and 67-2601.

54-3202. Definitions. — As used in this chapter, the terms defined in this section shall have the following meaning, unless the context clearly indicates another meaning.

(1) "Board" means the state board of social work examiners hereinafter provided in this chapter.

(2) "Social work" is defined as the professional activity of helping individuals, groups, families and communities enhance or restore their capacity for social functioning and creating societal conditions favorable to this goal. Social work practice consists of the professional application of social work values, principles and techniques. The practice of social work requires knowledge of human development and behavior of social, economic and cultural institutions and of the interaction of all these factors.

(3) "Clinical social worker" means an individual who is licensed under this chapter and may be designated as a licensed clinical social worker (LCSW).

(4) "Masters social worker" means an individual who is licensed under this chapter and may be designated as a licensed masters social worker (LMSW).

(5) "Social worker" means an individual who is licensed under this chapter and may be designated as a licensed social worker (LSW).

History.

I.C., § 54-3202, as added by 1976, ch. 213,

§ 1, p. 776; am. 2002, ch. 85, § 1, p. 189; am. 2010, ch. 161, § 1, p. 334.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 161, in subsection (3), deleted "has a master's degree or doctorate in social work and two (2) years of postgraduate supervised clinical experience approved by the board and who" following "individual who"; in subsection (4), deleted

"has a doctorate or master's degree in social work from a college or university approved by the board and" following "individual who"; and in subsection (5), deleted "has a baccalaureate degree in social work or related fields from a college or university approved by the board and" following "individual who."

54-3203. State board of social work examiners — Created — Appointments — Terms. — (1) A state board of social work examiners is hereby created and made a part of the department of self-governing agencies. It shall be the duty of the board to administer the provisions of this chapter pursuant to the provisions of chapters 26 and 52, title 67, Idaho Code. The board shall consist of six (6) members, three (3) of which shall be masters social workers, and two (2) of which shall be social workers, and one (1) of which shall be a lay member. Board members shall be appointed by the governor after reviewing and considering nominations for each position to

be filled that have been submitted to him. All terms shall be for a period of five (5) years. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired term after reviewing and considering nominations that have been submitted to him.

(2) Each social work member of the board shall:

(a) Be a resident of this state;

(b) Be currently licensed and in good standing to engage in the practice of social work in this state;

(c) At the time of appointment, have been actively engaged in the practice of social work for at least one (1) out of the last five (5) years; and

(d) Have at least three (3) years of experience in the practice of social work.

(3) Each fiscal year, the chairmanship will rotate to the person who is in the fourth year of their five (5) year term. The chairman shall preside at all meetings of the board. If this person is unable to serve, an election by a majority vote of the board shall determine the person who will serve as chair for that fiscal year. In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the board shall constitute a quorum.

(4) Each member of the board shall be compensated as provided by section 59-509(b), Idaho Code.

History.

I.C., § 54-3203, as added by 1976, ch. 213,
§ 1, p. 776; am. 1980, ch. 247, § 76, p. 582;

am. 2002, ch. 85, § 2, p. 189; am. 2004, ch.
110, § 1, p. 384.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

54-3204. Board — Powers and duties. — The board shall have the following powers and duties:

(1) Adopt and amend rules to administer and carry out the provisions of this chapter and for the conduct of its affairs, provided that such rules shall be promulgated in accordance with the provisions of chapters 26 and 52, title 67, Idaho Code;

(2) Maintain a list of the names and addresses of all persons licensed under this act;

(3) At its discretion, contract with the bureau of occupational licenses for those services deemed necessary for the proper administration of this chapter;

(4) To prescribe by rule the minimum amount and kind of continuing education to be required of each social worker seeking to renew a license in the state of Idaho;

(5) To establish by rule an inactive license status;

(6) To take such action as may be necessary to enforce the provisions of this chapter and to regulate the practice of social work.

History.

I.C., § 54-3204, as added by 1976, ch. 213, § 1, p. 776; am. 1994, ch. 139, § 1, p. 311; am.

2002, ch. 85, § 3, p. 189; am. 2008, ch. 15, § 1, p. 21.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2008 amendment, by ch. 15, added present subsection (5) and redesignated former subsection (5) as subsection (6).

Compiler's Notes.

The words "this act", in subsection (2), refer to S.L. 1976, ch. 213, which is compiled as §§ 54-3201 to 54-3214, 54-3216, 54-3217, and 67-2601.

54-3205. Disposition of receipts — Expenses — Refund. — All fees received under the provisions of this act shall be deposited in the state treasury to the credit of the occupational license [licenses] fund [account] and all costs and expenses incurred by the board under the provisions of this act shall be a charge against and paid from said fund [account] for such purposes, and the funds collected hereunder shall be immediately available for the administration of this act, the provisions of any other law notwithstanding. In no instance will the occupational license [licenses] fund [account] be obligated to pay any claims which in aggregate with claims already paid exceed the income to the occupational license [licenses] fund [account] which has been derived by the application of this act.

The money paid into the occupational license [licenses] fund [account] is continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and in carrying out and enforcing the provisions of this act.

History.

I.C., § 54-3205, as added by 1976, ch. 213, § 1, p. 776.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertions were added by the compiler to correct the name of the referenced account. See § 67-2605.

The words "this act" refer to S.L. 1976, ch. 213, which is compiled as §§ 54-3201 to 54-3214, 54-3216, 54-3217, and 67-2601.

54-3206. Licensing — Qualifications. — The board shall issue licenses to qualified applicants who have passed an examination conducted or approved by the board, are of good moral character and meet one (1) of the following:

(1) For a clinical social worker license possess a master's degree or doctorate in social work and two (2) years of postgraduate supervised clinical experience approved by the board;

(2) For a masters social worker license possess a master's degree or doctorate in social work from a college or university approved by the board; or

(3) For a social worker license possess a baccalaureate degree in social work from a college or university approved by the board.

History.

I.C., § 54-3206, as added by 1976, ch. 213, § 1, p. 776; am. 2010, ch. 161, § 2, p. 334.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 161, in the introductory paragraph, deleted “in addition to qualifications enumerated in section 54-3202, Idaho Code” following “applicants who,”

and substituted “conducted or approved by the board, are of good moral character and meet one (1) of the following” for “conducted by the board and of good moral character”; and added subsections (1) through (3).

54-3207. Private or independent practice of social work. —

(1) The private practice of social work is defined as that independent practice in which an individual is responsible for the contractual conditions of payment with clients, agencies and institutions.

(2) The independent practice of social work is defined as that practice in which an individual who, wholly or in part, practices social work autonomously with total responsibility for such independent practice.

History.

I.C., § 54-3207, as added by 1976, ch. 213, § 1, p. 776; am. 2002, ch. 85, § 4, p. 189.

54-3208. Endorsement. — An applicant for endorsement shall hold a current unrestricted license in another state or territory and shall meet those requirements as provided by board rule.

History.

I.C., § 54-3208, as added by 1976, ch. 213, § 1, p. 776; am. 2002, ch. 85, § 5, p. 189.

54-3209. Fees — Licensing — Duration of licenses. — Each person submitting an application for licensure to practice social work shall pay an application fee, as determined by the rules of the board, which shall not exceed one hundred fifty dollars (\$150) and which shall include the original license fee. Each person licensed to practice social work shall pay a license renewal fee, not to exceed one hundred fifty dollars (\$150) as determined by the rules of the board. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. Renewal shall be in accordance with the requirements of section 67-2614, Idaho Code.

History.

I.C., § 54-3209, as added by 1976, ch. 213, § 1, p. 776; am. 1979, ch. 102, § 1, p. 246; am. 2001, ch. 78, § 1, p. 198; am. 2002, ch. 85, § 6,

p. 189; am. 2003, ch. 21, § 15, p. 77; am. 2004, ch. 116, § 1, p. 390; am. 2009, ch. 149, § 1, p. 439.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 149, twice

substituted “one hundred fifty dollars (\$150)” for “seventy-five dollars (\$75.00).”

54-3210. Code of professional conduct. — The board shall prepare and adopt a code of professional conduct and may revise and amend such code from time to time. Preparation, revision, amendment and distribution of said code of professional conduct shall be pursuant to the provisions of chapters 26 and 52, title 67, Idaho Code.

History.

I.C., § 54-3210, as added by 1976, ch. 213,
§ 1, p. 776; am. 2002, ch. 85, § 7, p. 189.

54-3211. Refusal to issue, refusal to renew, suspension or revocation of license — Unprofessional conduct. — The board may refuse to issue, refuse to renew, may suspend, or may revoke any license issued under this chapter, or take other disciplinary action, upon proof, after a hearing, that the person has engaged in “unprofessional conduct.” The words “unprofessional conduct” as relating to persons licensed under this chapter are defined to include but are not limited to:

- (1) Conviction of a felony, or of any offense involving moral turpitude.
- (2) Habitual drunkenness or addiction to habit-forming drugs, either of which impair the ability to perform his work without danger to himself or the public he serves.
- (3) Fraud or deceit in connection with services rendered as a social worker, masters social worker or clinical social worker or in establishing qualifications for licensure under this chapter.
- (4) Aiding or abetting any person not licensed under this chapter in the practice of social work in the state of Idaho.
- (5) Failing to be licensed or continuing to represent himself as licensed after the expiration of his license.
- (6) Being found guilty of unprofessional conduct by the rules established by the board.
- (7) Failing to comply with any of the provisions of this chapter.

History.

I.C., § 54-3211, as added by 1976, ch. 213, § 1, p. 776; am. 2001, ch. 78, § 2, p. 198; am. 2002, ch. 85, § 8, p. 189.

54-3212. Revocation or suspension of licenses — Hearings — Taking testimony — Appeal. — The board shall have the power to refuse to issue, refuse to renew, revoke or suspend any license if the same was obtained through error or fraud, or if the holder thereof is shown to be incompetent, or has willfully violated any of the rules prescribed by the board, or as prescribed by this chapter, provided, before any license shall be revoked or suspended, the holder thereof shall have written notice enumerating the charges against him and a hearing by an officer, appointed by the board or the chief of the bureau of occupational licenses, shall be held after notice has been served on the licensee. Provisions of chapter 52, title 67, Idaho Code, shall apply to all cases of revocation or suspension of licenses.

The chief of the bureau of occupational licenses shall have the power to appoint, by an order in writing, any competent person to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the board shall be based on

examination of the testimony taken and the records produced. Any person whose license has been revoked may, after the expiration of two (2) years from the date of such revocation, but not before, apply for a new license.

History.

I.C., § 54-3212, as added by 1976, ch. 213,
§ 1, p. 776; am. 2002, ch. 85, § 9, p. 189.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

54-3213. Privileged communications. — No person licensed under the provisions of this chapter shall disclose any information he may have acquired from persons consulting him in his professional capacity that was necessary to enable him to render services in his professional capacity to those persons, except:

(1) With the written consent of that person or, in the case of death or disability, of his own personal representative, other person authorized to sue, or the beneficiary of an insurance policy on his life, health or physical condition;

(2) That a person licensed under the provisions of this chapter shall not be required to treat as confidential communication that reveals the contemplation or execution of a crime or harmful act;

(3) When the person is a minor under the laws of this state, and the information acquired by the licensee indicates that the minor was the victim or subject of a crime, the licensee may testify fully in relation thereto upon any examination, trial, or other proceeding in which the commission of such a crime is the subject of the inquiry;

(4) When the person waives the privilege by bringing charges against the licensee;

(5) Communications between any member of an evaluation committee and a respondent as prescribed by section 66-406(9), Idaho Code.

History.

I.C., § 54-3213, as added by 1976, ch. 213,
§ 1, p. 776; am. 2002, ch. 85, § 10, p. 189.

JUDICIAL DECISIONS

ANALYSIS

Applicability.

—Juvenile proceedings.

Applicability.

—Juvenile Proceedings.

This section does not apply to reports by social workers to a court in the course of juvenile proceedings; such reports become

part of the court records and are no longer correctly characterized as information the social worker may have acquired from persons consulting the social worker in the social worker's professional capacity. *State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992).

54-3214. License required — Representation to public. — (1) No

person may engage in the practice of social work unless he is licensed under this chapter, or is a student under the supervision of a person who is licensed under this chapter.

(2) No person shall be represented as a social worker by the use of titles "social worker," "masters social worker," "clinical social worker," "social caseworker," "social service worker," "social service director" or any other title or similar designation that includes such words, or by adding the letters "LCSW," "SW," "LSW," or "LMSW" unless licensed under the provisions of this chapter.

(3) Nothing within this chapter shall be construed to prevent any person from doing work within the standards and ethics of their respective professions or calling provided they do not hold themselves out to the public by title or description of service as being engaged in social work practice.

History.

I.C., § 54-3214, as added by 1976, ch. 213, § 1, p. 776; am. 2002, ch. 85, § 11, p. 189.

JUDICIAL DECISIONS

Federal Programs.

The district court did not err in affirming the disallowance of reimbursement to home for mentally retarded of the social worker's salary which had been incurred under Medicaid program because she was not licensed,

even though her work was done satisfactorily, since federal regulations required such persons to be licensed if required by state law. *Gem State Homes, Inc. v. Idaho Dept of Health & Welfare*, 113 Idaho 23, 740 P.2d 65 (Ct. App. 1987).

54-3215. Exemptions. — Students enrolled in a recognized program leading to a degree in social work may practice only under the direct supervision of a social worker of the licensure status necessary to provide the appropriate level of supervision as provided by board rule. This chapter shall not apply to any employee of any facility licensed under section 39-1301(b), Idaho Code, or section 39-1301(c), Idaho Code, who is designated in writing to be responsible for that facility's social services program and who receives regular consultation from a qualified social worker.

History.

I.C., § 54-3215, as added by 2000, ch. 166, § 1, p. 417; am. 2001, ch. 167, § 2, p. 574; am. 2002, ch. 85, § 12, p. 189.

STATUTORY NOTES

Prior Laws.

Former § 54-3215, which comprised, I.C., § 54-3215, as added by 1976, ch. 213, § 1, p. 776, am., 2000, ch. 616, § 1 was repealed by S.L. 2000, ch. 166, § 2, effective January 2, 2001.

Effective Dates.

Section 4 of S.L. 2000, ch. 166 declared an emergency. Approved April 3, 2000.

Section 3 of S.L. 2001, ch. 167 declared an emergency. Approved March 23, 2001.

54-3216. Attorney general — Prosecuting attorneys. — It shall be the right and duty of the attorney general or the prosecuting attorneys of the various counties to represent and appear for the people of the state of Idaho and the board in all actions and proceedings involving any question under

this act or under any order or act of said board and perform such other services as required.

History.

I.C., § 54-3216, as added by 1976, ch. 213,
§ 1, p. 776.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

213, which is compiled as §§ 54-3201 to 54-3214, 54-3216, 54-3217, and 67-2601.

Compiler's Notes.

The words "this act" refer to S.L. 1976, ch.

54-3217. Violations of act a misdemeanor. — Any person who shall engage in the profession of social work as herein defined without a license as provided for by this act, or the rules or regulations of the board herein provided for, shall be guilty of a misdemeanor.

History.

I.C., § 54-3217, as added by 1976, ch. 213,
§ 1, p. 776.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none prescribed, § 18-317.

213, which is compiled as §§ 54-3201 to 54-3214, 54-3216, 54-3217, and 67-2601.

Compiler's Notes.

The words "this act" refer to S.L. 1976, ch.

CHAPTER 33

FREEDOM OF CHOICE OF DENTURES ACT

SECTION.

- 54-3301. Statutory intent.
- 54-3302. Short title.
- 54-3303. Definitions.
- 54-3304. License to practice required.
- 54-3305. Exceptions.
- 54-3306. Prohibited activities.
- 54-3307. Board — Members — Vacancies.
- 54-3308. Officers — Meetings — Voting —
Records — Compensation —
Fair practice committee.
- 54-3309. Board powers and duties.
- 54-3310. Application for license.
- 54-3311. Examinations.
- 54-3312. Fees.
- 54-3313. Licensing.

SECTION.

- 54-3314. Suspension or revocation of license.
- 54-3315. Revocation of license stays eligibility.
- 54-3316. Renewal or reinstatement of license.
- 54-3317. Disposition of receipts.
- 54-3318. Dental health insurance policies to include denturist's services.
- 54-3319. Violation a misdemeanor.
- 54-3320. Notice of board address — Prohibited activities — Guarantee on services.
- 54-3321. Judicial review of board action.
- 54-3322. Severability.
- 54-3323. Injunction procedure.

54-3301. Statutory intent. — This statute is enacted to promote competence and excellence in the providing of prosthetic dental appliances and services related thereto to the public at reasonable costs.

History.

1982 Init. Meas., No. 2, § 1; am. 1983, ch. 194, § 1, p. 527.

STATUTORY NOTES**Cross References.**

Dentists, § 54-901 et seq.

54-3302. Short title. — This act shall be known as the “Idaho Freedom of Choice of Dentures Act”.

History.

1982 Init. Meas., No. 2, § 2; am. 1983, ch. 194, § 1, p. 527.

STATUTORY NOTES**Compiler's Notes.**

The term “this act” refers to 1982 Init.

Meas., No. 2, which is compiled as §§ 54-3301 to 54-3313 and 54-3315 to 54-3322.

54-3303. Definitions. — As used in this chapter, unless the context requires otherwise:

(a) “Board” means the state board of denturistry.

(b) “Denture” means any removable full upper or lower prosthetic dental appliance to be worn in the human mouth.

(c) “Denturist” means a person licensed under this chapter to engage in the practice of denturistry.

(d) “Practice of denturistry” means:

(1) the making, fitting, constructing, altering, reproducing or repairing of a full upper or lower removable prosthetic denture, the repairing of a removable partial upper or lower prosthetic denture, the furnishing or supplying of such a denture directly to a person or advising the use of any such denture;

(2) the taking or making, or the giving of advice, assistance or facilities respecting the taking or making of any impression, bite, cast or design preparatory to, or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing or reproducing any such full upper or lower removable prosthetic denture;

(3) the practice of denturistry within the context of this chapter requires that all work except cast frame work or work required to meet the needs of the homebound be performed on the licensee's premise.

History.

1982 Init. Meas., No. 2, § 3; am. 1983, ch.

194, § 1, p. 527; am. 1988, ch. 133, § 1, p. 237.

STATUTORY NOTES**Cross References.**

State board of dentistry, § 54-907.

54-3304. License to practice required. — From and after April 1,

1983, a person must hold a license for the practice of denturistry in order to perform the following acts:

- (a) Engage or offer to engage, in the practice of denturistry; or
- (b) Use in connection with his/her name the word "denturist" or any other words, letters, abbreviations or insignia implying that such person is engaged in the practice of denturistry.

History.

1982 Init. Meas., No. 2, § 4; am. 1983, ch. 194, § 1, p. 527.

54-3305. Exceptions. — The prohibitions of this chapter do not apply to:

- (a) a person interning under the supervision of a denturist;
- (b) the practice of dentistry or medicine by persons authorized to do so by this state;
- (c) a student of denture technology in pursuit of clinical studies under an approved school program;
- (d) a denture technician, as defined by board rule, performing services under the direction of a licensed denturist or licensed dentist when the service does not involve contact with the intended user.

History.

1982 Init. Meas., No. 2, § 5; am. 1983, ch. 194, § 1, p. 527; am. 1988, ch. 133, § 2, p. 237.

54-3306. Prohibited activities. — Prohibitions on activities of licensed denturists:

- (a) He/she will not perform procedures which would alter any oral tissues or natural teeth.
- (b) He/she will not insert or fit immediate dentures in the mouth of the intended wearer.
- (c) He/she will not diagnose or treat any abnormalities of any human mouth.
- (d) He/she will not prescribe any drugs or treatment for any oral or medical diseases.
- (e) He/she will not construct or fit orthodontic appliances.

History.

1982 Init. Meas., No. 2, § 6; am. 1983, ch. 194, § 1, p. 527.

54-3307. Board — Members — Vacancies. — (a) There is hereby created a state board of denturistry of the state of Idaho, which shall consist of five (5) members. Three (3) members of the board shall be persons who have been nominated by the association of Idaho denturists, inc., who have had at least five (5) years continuous experience immediately prior to their nomination in the practice of denturistry. Two (2) other members of the board shall be lay persons nominated by the director of the Idaho department of health and welfare. At least two (2) nominees for each position must be nominated by the nominating body.

(b) The members of the board shall hold office for terms of three (3) years each; provided, of the initial board, the three (3) members to be appointed from nomination of the association of Idaho denturists shall serve for terms of one (1) year, two (2) years, and three (3) years, respectively, as designated in their appointment, and of the initial board the two (2) lay members shall serve for terms of two (2) and three (3) years, respectively, as designated in their appointment. Thereafter members shall be appointed to the board for terms of three (3) years each, except that appointments to fill vacancies shall be for the unexpired term of such vacancies.

(c) Appointments to the board shall be made by the governor from the nominees set forth in this section, and each member of the board shall hold office for his term and until his successor is duly appointed by the governor.

History.

1982 Init. Meas., No. 2, § 7; am. 1983, ch. 194, § 1, p. 527.

STATUTORY NOTES

Cross References.

Director of department of health and welfare, § 56-1003.

54-3308. Officers — Meetings — Voting — Records — Compensation — Fair practice committee. — (a) The board shall organize by the election of one (1) of its members as president, one (1) of its members as secretary, and one (1) of its members as treasurer; provided, that the offices of secretary and treasurer may be held by one (1) person. Officers of the board shall be elected for terms of one (1) year at the annual meeting of the board, but the same person may not hold the office of president for more than three (3) years in succession.

(b) The board shall meet at least annually to conduct its business and perform its duties, and shall meet at such other times as designated by the president or by request of two (2) or more members of the board.

(c) A majority of the board shall constitute a quorum for all purposes, and the majority vote of the members voting shall constitute the action of the board.

(d) The secretary of the board shall keep a complete record of all of its proceedings.

(e) Denturist members of the board shall be compensated as provided in section 59-509(b), Idaho Code, for attending meetings of the board or for performing duties prescribed by this chapter and approved by the board; provided, the lay members shall be compensated as provided in section 59-509(n), Idaho Code.

(f) The board shall appoint a fair practice committee consisting of three (3) denturists selected from the membership of the association of Idaho denturists. This committee will meet as need arises and shall file a written report with the board on the decisions made.

History. 194, § 1, p. 527; am. 2010, ch. 121, § 1, p. 1982 Init. Meas., No. 2, § 8; am. 1983, ch. 268.

STATUTORY NOTES

Amendments. tuted “59-509(n)” for “59-509(h)” in paragraph The 2010 amendment, by ch. 121, substi- (1)(e).

54-3309. Board powers and duties. — The board shall have the following powers and duties:

- (a) To determine the qualifications of persons applying for licenses under this chapter;
- (b) To prescribe, administer and determine examinations and a passing grade for licenses under this chapter;
- (c) To collect and adjust fees and charges prescribed in this chapter to cover the operating expenses of the board as may become necessary from time to time;
- (d) To issue licenses for the practice of denturistry under the conditions prescribed in this chapter;
- (e) To revoke or suspend denturists’ licenses in the manner prescribed by this chapter;
- (f) To administer oaths and subpoena witnesses for the purpose of carrying out the activities authorized under this chapter;
- (g) To make rules and regulations pursuant to chapter 52, title 67, Idaho Code, to carry out the intents and purposes of this chapter;
- (h) To appoint committees and chairpersons and to delegate responsibilities to them as the need arises from time to time;
- (i) To authorize, by written agreement, the bureau of occupational licenses to act as agent in its interest.

History. 1982 Init. Meas., No. 2, § 9; am. 1983, ch. 194, § 1, p. 527.

STATUTORY NOTES

Cross References. Bureau of occupational licenses, § 67-2601.

54-3310. Application for license. — Upon application and payment of the appropriate fee, the board shall issue a license to practice denturistry to any applicant who meets one (1) of the following criteria:

- (a) Applications filed prior to April 1, 1983: Applicants must furnish two (2) signed affidavits by persons other than family members (or other evidence as may be prescribed by the board) that he/she has been employed for at least five (5) years prior to application in denture technology and is able to demonstrate competency in intra-oral procedures, and has successfully completed courses accredited by the board in head and neck anatomy and oral pathology; and has been a resident of the state of Idaho for six (6) months prior to the filing of the application.
- (b) Applications filed on or after April 1, 1983: Applicants must satisfac-

torily complete the examinations established by the board pursuant to this chapter; and have completed formal training of not less than two (2) years duration at an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of higher education, the curriculum of which includes courses in oral pathology, physiology, head and oral anatomy, clinical microbiology, clinical jurisprudence, asepsis, and first aid for minor office emergencies; and have completed at least two (2) years internship under the supervision of a licensed denturist or have equivalent experience as established by board rule prior to the filing of the application.

History.

1982 Init. Meas., No. 2, § 10; am. 1983, ch. 194, § 1, p. 527.

STATUTORY NOTES**Cross References.**

State board of education and board of regents of the university of Idaho, § 33-101.

Compiler's Notes.

The words in parentheses so appeared in the law as enacted.

54-3311. Examinations. — The board shall administer the examinations for licensing, subject to the following requirements:

(a) Examinations shall be of such character as to determine the qualifications, fitness and ability of the applicant to practice dentistry, with the form of the test to be written, oral, or a practical demonstration of skills, or such combination of the three (3) as the board may prescribe.

(b) The examination shall include coverage of the following subjects:

- (1) Head and oral anatomy;
- (2) Oral pathology;
- (3) Physiology;
- (4) Clinical dental technology;
- (5) Dental laboratory technology;
- (6) Microbiology;
- (7) Clinical jurisprudence;
- (8) Asepsis;
- (9) First aid for minor office emergencies.

History.

1982 Init. Meas., No. 2, § 11; am. 1983, ch. 194, § 1, p. 527.

54-3312. Fees. — The board shall be entitled to charge and collect the following fees subject to adjustment as prescribed by section 54-3309(c), Idaho Code:

- (a) An application fee (which shall include the cost of an examination when required) of not to exceed three hundred dollars (\$300);
- (b) An initial license fee of not to exceed three hundred dollars (\$300);
- (c) A renewal fee of not to exceed one thousand dollars (\$1,000).

History.

1982 Init. Meas., No. 2, § 12; am. 1983, ch. 194, § 1, p. 527; am. 1988, ch. 133, § 3, p. 237; am. 2010, ch. 121, § 2, p. 268.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 121, substituted "one thousand dollars (\$1,000)" for "six hundred dollars (\$600)" in subsection (c).

Compiler's Notes.

The words in parentheses so appeared in the law as enacted.

54-3313. Licensing. — A denturist license shall be valid for a period of one (1) year, whereupon a renewal license will be issued upon payment of the renewal fee and the submission of proof of the completion of not less than twelve (12) hours continuing education accredited by the board during the one (1) year immediately preceding the date of application for renewal. The license shall bear on its face the address where the licensee's denturist services will be performed.

History.

1982 Init. Meas., No. 2, § 13; am. 1983, ch. 194, § 1, p. 527; am. 1988, ch. 133, § 4, p. 237; am. 2003, ch. 21, § 16, p. 77.

54-3314. Suspension or revocation of license. — (a) After providing an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, the board shall have the power to refuse to issue a license, suspend or revoke a license, or place a licensed person on probation for a period specified by the board and subject to such conditions as the board shall impose, or reprimand or censure a licensee for any of the following causes:

(1) Conviction, finding of guilt, receipt of a withheld judgment or suspended sentence in this or any other state of a felony or of any other crime where such crime bears a demonstrable relationship to the practice of dentistry.

(2) Incompetence or gross negligence in the practice of dentistry.

(3) Fraud or misrepresentation in the practice of dentistry.

(4) Use of any narcotic or dangerous drug or intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of dentistry.

(5) The violation of any provision of this chapter or rules adopted thereunder.

(b) The board shall have the power to examine and inspect the place of business of any licensed denturist at a reasonable time and in a reasonable manner to assure compliance with this chapter.

(c) The board shall have the right to establish standards of conduct and practice, and the power to enforce such standards with monetary penalties and/or revocation or suspension of license.

History.

1982 Int. Meas., No. 2, § 14; am. 1983, ch. 194, § 1, p. 527; am. 1988, ch. 133, § 5, p. 237; am. 1993, ch. 216, § 89, p. 587.

54-3315. Revocation of license stays eligibility. — A denturist whose license has been revoked either by the Idaho board of dentistry or

the similar body of another state, shall not be eligible to apply for a license until one (1) year after the date of revocation.

History.

1982 Init. Meas., No. 2, § 15; am. 1983, ch. 194, § 1, p. 527.

54-3316. Renewal or reinstatement of license. — All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

History.

1982 Init. Meas., No. 2, § 16; am. 1983, ch. 194, § 1, p. 527; am. 2003, ch. 21, § 17, p. 77.

54-3317. Disposition of receipts. — All moneys received under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational license account and all costs and expenses incurred by the board under the provisions of this chapter shall be a charge against and paid from said account. In no instance will the occupational license account be obligated to pay any claims which in aggregate with claims already paid exceed the income to the occupational license account which has been derived by the application of this chapter.

History.

1982 Init. Meas., No. 2, § 17; am. 1983, ch. 194, § 1, p. 527.

STATUTORY NOTES

Cross References.

Occupational licenses account, § 67-2605.

54-3318. Dental health insurance policies to include denturist's services. — Notwithstanding any provisions of any policy of insurance covering dental health, whenever such policy provides for reimbursement for any service which is within the lawful scope of practice of a denturist, the insured under such policy shall be entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist. This section shall apply to any policy covering dental insurance which is issued after January 1, 1983. Policies which are in existence on January 1, 1983, shall be brought into compliance on the next anniversary date, renewal date, or the expiration date of the applicable collective bargaining contract, if any, whichever date is latest.

History.

1982 Init. Meas., No. 2, § 18; am. 1983, ch. 194, § 1, p. 527.

54-3319. Violation a misdemeanor. — Violation of any provision of this chapter shall constitute a misdemeanor.

History.

1982 Init. Meas., No. 2, § 19; am. 1983, ch. 194, § 1, p. 527.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none prescribed, § 18-113.

54-3320. Notice of board address — Prohibited activities — Guarantee on services. — (a) There shall be posted in a conspicuous area on any premises where the practice of denturistry is carried on, a notice with lettering of a size easily read by the average person and in substantially the following form:

ANY CONSUMER WHO HAS A COMPLAINT RELATING TO PRACTICES OF THIS ESTABLISHMENT MAY CONTACT THE IDAHO BOARD OF DENTURITRY _____ address _____ with a copy to THE BUREAU OF OCCUPATIONAL LICENSING _____ address _____

(b) No person licensed under the provisions of this chapter shall directly or indirectly:

- (1) make any payment or gift to a person who has referred a patient;
- (2) receive or accept any rebate, payment or gift from any person to whom a patient is referred; or
- (3) engage in any form of fee-splitting or other form of sharing of remuneration, with respect to referrals.

(c) All dentist services will be unconditionally guaranteed for a period of not less than ninety (90) days.

History.

1982 Init. Meas., No. 2, § 20; am. 1983, ch. 194, § 1, p. 527.

54-3321. Judicial review of board action. — Any person who shall be aggrieved by any action of the board in denying, refusing to renew, suspending or revoking a dentist license may seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code. A copy of the petition for judicial review shall be served upon the president or secretary of the board with notice to the attorney general of the state of Idaho.

History.

1982 Init. Meas., No. 2, § 21; am. 1983, ch. 194, § 1, p. 527; am. 1993, ch. 216, § 90, p. 587.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

54-3322. Severability. — If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter shall supersede and take precedence over any conflicting provisions contained in chapter 9, title 54, Idaho Code, concerning the practice of dentistry.

History.

1982 Init. Meas., No. 2, § 22; am. 1983, ch. 194, § 1, p. 527.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1983, ch. 194 declared an emergency and provided that the act should

be in full force and effect on and after its passage and approval, retroactive to December 1, 1982. Approved April 11, 1983.

54-3323. Injunction procedure. — Whenever any person, corporation, partnership or association of any kind or nature violates any of the provisions of this act, the board, without regard to criminal prosecution, may maintain an action in the name of the state of Idaho to enjoin said person, corporation, partnership or association from any further violations, such action to be brought either in the county in which said acts are claimed to have been or are being committed, in the county where the defendant resides, or in Ada county. Upon the filing of a verified complaint in the district court, the court, if satisfied that the acts complained of have been or probably are being or may be committed, may issue an injunction pendente lite without bond, on request of the board, enjoining the defendant from the commission of any such act or acts constituting said violations. A copy of said complaint shall be served upon the defendant, and the proceedings shall thereafter be conducted as in any other similar civil action. If the commission of said act or acts be established, the court shall enter a decree perpetually enjoining said defendant from committing said act or acts. In case of violation of any injunction issued under the provisions of this section, the court, or the judge thereof at chambers, may summarily try and punish the offender for his contempt of court.

History.

I.C., § 54-3323, as added by 1988, ch. 133, § 6, p. 237.

STATUTORY NOTES

Cross References.

Contempt, § 7-601 et seq.

Compiler's Notes.

The term "this act" was added by S.L. 1988,

chapter 133, which is codified as §§ 54-3303, 54-3305, 54-3312 to 54-3314, and 54-3323.

CHAPTER 34

COUNSELORS AND THERAPISTS

SECTION.

- 54-3400. Legislative findings.
- 54-3401. Definitions.
- 54-3402. License required — Exemptions.
- 54-3403. Board — Organization and meetings.
- 54-3404. Idaho state licensing board of professional counselors and marriage and family therapists — Powers.
- 54-3405. Qualifications for licensure.
- 54-3405A. Qualifications for licensure.
- 54-3405B. Qualifications for licensure.
- 54-3405C. Qualifications for licensure.
- 54-3406. Endorsement.
- 54-3407. Disciplinary proceedings.

SECTION.

- 54-3408. Certain acts prohibited.
- 54-3409. Injunction procedure.
- 54-3410. Confidential communication.
- 54-3410A. Informed consent and information disclosure to clients.
- 54-3410B. [Amended and Redesignated.]
- 54-3411. Fees on licensure.
- 54-3412. Disposition of receipts — Expenses.
- 54-3413. Administration by bureau of occupational licenses.
- 54-3414. Powers and duties of bureau of occupational licenses.
- 54-3415. Renewal or reinstatement of license.

54-3400. Legislative findings. — The practice of counseling and marriage and family therapy in the state of Idaho is hereby declared to affect the public health, safety and welfare, and to be subject to regulation and control in the public interest to protect the public from the unprofessional, improper, unauthorized and unqualified practice of counseling or marriage and family therapy, and from unprofessional conduct by persons licensed to practice counseling or marriage and family therapy. This chapter should be construed liberally to carry out these objectives and purposes.

History.

I.C., § 54-3400, as added by 1998, ch. 413, § 1, p. 1302; am. 2012, ch. 68, § 1, p. 191.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 68, inserted “and marriage and family therapy” once and

“or marriage and family therapy” twice in the first sentence.

54-3401. Definitions. — As used in this chapter:

- (1) “Board” means the Idaho state licensing board of professional counselors and marriage and family therapists.
- (2) “Bureau chief” means the chief of the bureau of occupational licenses of the state of Idaho.
- (3) “Department” means the department of self-governing agencies of the state of Idaho.
- (4) “Licensed associate marriage and family therapist” means any person licensed under this chapter as an associate marriage and family therapist to practice marriage and family therapy under supervision as set forth in this chapter.
- (5) “Licensed clinical professional counselor” means any person licensed

under this chapter as a licensed clinical professional counselor to practice clinical professional counseling as set forth in this chapter.

(6) "Licensed marriage and family therapist" means any person licensed under this chapter to practice marriage and family therapy as defined in this chapter.

(7) "Licensed professional counselor" means any person licensed under this chapter to practice professional counseling as defined in this chapter.

(8) "Marriage and family therapy" means the evaluation and treatment of mental and emotional disorders, whether cognitive, affective or behavioral, within the context of marriage and family systems. Marriage and family therapy includes the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples and families for the purpose of treating nervous and mental disorders including, but not limited to, addictive disorders.

(9) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private. A licensed associate marriage and family therapist shall only practice marriage and family therapy under supervision as established in this chapter and rules of the board. The practice of marriage and family therapy is restricted to marriage and family therapists competent in the area of practice, and in the use of such methods, techniques or modalities.

(10) "Practice of professional counseling" means the application of mental health, psychological, and human development principles in order to facilitate human development and adjustment throughout the life span; prevent, assess, and treat mental, emotional or behavioral disorders and associated distresses which interfere with mental health; conduct assessments for the purpose of establishing treatment goals and objectives; and plan, implement and evaluate treatment plans using counseling treatment interventions. The practice of professional counseling also means the application of cognitive, affective, behavioral, and systemic counseling strategies across the continuum of care. It includes principles of development, wellness and pathology that reflect a contemporary society. Such interventions are specifically implemented in the context of a professional counseling setting.

The practice of professional counseling includes, but is not limited to:

- (a) Individual, group, couples, family counseling and therapy;
- (b) Assessment;
- (c) Crisis intervention;
- (d) Treatment of persons with mental and emotional disorders including, but not limited to, addictive disorders;
- (e) Guidance and consulting to facilitate normal growth and development, including educational and career development;
- (f) Utilization of functional assessment and counseling for persons requesting assistance in adjustment to a disability;
- (g) Consulting;
- (h) Research; and
- (i) Referral.

The use of specific methods, techniques, or modalities within the practice of professional counseling is restricted to professional counselors appropriately trained in the use of such methods, techniques or modalities.

(11) "Supervised experience" and "experience under supervision" means a face-to-face process by which an approved supervisor facilitates the professional growth of a supervisee and monitors the supervisee's clinical performance. A supervisor provides professional direction to help the supervisee attain knowledge, improve case conceptualization and process skills, address personal issues as it pertains to clinical work, and strengthen professional development, ethics and boundary-setting as the supervisee provides clinical services to clients. A supervisor monitors the supervisee's clinical performance through direct and indirect observation of the services delivered by the supervisee, such as audio or video recordings, live supervision and other methods of observation of services.

History.

I.C., § 54-3401, as added by 1982, ch. 183, § 1, p. 480; am. 1998, ch. 413, § 2, p. 1302;

am. 2001, ch. 71, § 2, p. 142; am. 2008, ch. 87, § 1, p. 237; am. 2010, ch. 235, § 40, p. 542; am. 2012, ch. 68, § 2, p. 191.

STATUTORY NOTES

Cross References.

Chief of bureau of occupational licenses, § 67-2603.

Department of self-governing agencies, § 67-2601 et seq.

Amendments.

The 2008 amendment, by ch. 87, added subsection (4) and redesignated the subsequent subsections accordingly; and added the last sentence in present subsection (8).

The 2010 amendment, by ch. 235, deleted "or handicapping condition" from the end in paragraph (9)(f).

The 2012 amendment, by ch. 68, added subsection (5) and renumbered the subsequent subsections accordingly; added "including, but not limited to, addictive disorders" at the end of subsections (8) and para-

graph (10)(d); added the last sentence in subsection (9); in subsection (10), substituted "The practice of professional counseling also means the application of cognitive, affective, behavioral, and systemic counseling strategies across the continuum of care. It includes principles of development, wellness and pathology that reflect a contemporary society." for "“Counseling treatment interventions” means the application of cognitive, affective, behavioral, and systemic counseling strategies, which include principles of development, wellness and pathology that reflect a pluralistic society“ and substituted "setting" for "relationship" at the end of the first introductory paragraph; and added subsection (11).

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3402. License required — Exemptions. — It shall be unlawful for any person to engage in any of the following acts:

(1) To practice professional counseling or marriage and family therapy for compensation without first having complied with the provisions of this chapter and without a valid license as required by this chapter.

(2) To represent himself/herself to be a licensed professional counselor or licensed clinical professional counselor or licensed marriage and family therapist or licensed associate marriage and family therapist unless he/she shall first obtain a license pursuant to this chapter.

(3) To make use of any title, words, letters or abbreviations which may reasonably be confused with a designation provided by this chapter.

(4) To materially refuse to furnish the board information or records

required or requested pursuant to this chapter or pursuant to an investigation commenced pursuant to this chapter.

Nothing in this chapter shall be construed to apply to the activities and services of licensed or credentialed members of other professions, such as physicians, psychologists, registered nurses, social workers, drug and alcohol counselors, or attorneys performing duties consistent with the laws of this state, their training, and any code of ethics of their professions, provided they do not represent themselves by any title or practice description in the manner prescribed in section 54-3401, Idaho Code.

Nothing in this chapter shall be construed to apply to the activities, services and use of an official title on the part of a person certified by the state to render counseling or marriage and family therapy or counseling-related services, provided such persons are performing these activities within the scope of their employment, including school and vocational counselors.

Nothing in this chapter shall be construed to apply to the activities and services of a student or trainee pursuing a course of study in counseling or in marriage and family therapy in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study, or of an intern in counseling acting under the direct supervision of a licensed professional counselor as established and limited by rules of the board, or of an intern in marriage and family therapy acting under the direct supervision as established and limited by rules of the board provided, that such person be designated, for example, a "counselor intern" or "marriage and family therapy intern."

Nothing in this chapter shall be construed to apply to the activities and services of a person obtaining their postgraduate marriage and family therapy clinical experience, provided these activities are provided under supervision, and provided they have registered according to procedures to be established by the board.

Nothing in this chapter shall be construed to apply to a nonresident whose counseling or marriage and family therapy activities and services are rendered not more than ten (10) days during any calendar year, provided that such a person is duly authorized to perform such activities and services under the laws of the state or country of that person's residence.

Nothing in this chapter shall be construed to apply to the activities and services of any religious denomination or sect or faith-based counseling of any kind.

Nothing in this chapter shall be construed to apply to the activities and descriptions of persons offering volunteer or professional services for public and private nonprofit organizations or agencies for which the services are rendered.

Nothing in this chapter shall be construed to apply to a person authorized to practice counseling or marriage and family therapy in another state or country rendering care in a time of disaster.

History.

I.C., § 54-3402, as added by 1982, ch. 183, § 1, p. 480; am. 1998, ch. 413, § 3, p. 1302;

am. 2001, ch. 71, § 3, p. 142; am. 2001, ch. 83, § 1, p. 205; am. 2008, ch. 87, § 2, p. 238; am. 2012, ch. 68, § 3, p. 191.

STATUTORY NOTES**Amendments.**

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 71, § 3, in subsection (1), inserted "or marriage and family therapy" following "professional counseling"; in subsection (2), inserted "or licensed marriage and family therapist" following "or licensed counselor"; in the second undesignated paragraph following subsection (4), inserted "marriage and family therapy or" following "to render counseling or"; in the third paragraph following subsection (4), inserted "or in marriage or family therapy" following "of study in counseling"; added "or 'marriage and family therapy intern'" at the end; added the fourth paragraph following subsection (4); in the fifth paragraph following subsection (4), inserted "or marriage and family therapy" preceding "activities and services"; and in the seventh paragraph following subsection (4), substituted "which" for "whom".

The 2001 amendment, by ch. 83, § 1, in the third paragraph following subsection (4), deleted "intern" following "student"; and inserted the language beginning "or of an intern in" and ending "rules of the board," preceding "provided, that such".

The 2008 amendment, by ch. 87, inserted "or licensed associate marriage and family therapist" in subsection (2).

The 2012 amendment, by ch. 68, substituted "licensed clinical professional counselor" for "licensed counselor" in subsection (2); in the third undesignated paragraph, deleted "in private practice" following "a licensed professional counselor" and inserted "or of an intern in marriage and family therapy acting under the direct supervision as established and limited by rules of the board"; and added the last paragraph.

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3403. Board — Organization and meetings. — There is hereby created in the department of self-governing agencies an Idaho state licensing board of professional counselors and marriage and family therapists as follows:

(1) The board shall consist of six (6) members, residents of the state of Idaho, who shall be appointed by the governor. In making appointments, the governor shall give consideration to recommendations submitted by the Idaho counseling association in consultation with other state counselor organizations, and the Idaho association for marriage and family therapy in consultation with other state marriage and family therapy organizations. If recommendations are not made within sixty (60) days of notification and request, the governor may make appointments of any qualified individual.

(2) Initial appointments to the board shall be for the following terms: one (1) member for a term ending in one (1) year; one (1) member for a term ending in two (2) years; one (1) member for a term ending in three (3) years; and one (1) member for a term ending in four (4) years. Upon the effective date of this act, the governor shall also initially appoint to the board one (1) person eligible for licensure as a marriage and family therapist for a term of four (4) years, and one (1) person eligible for licensure as both a professional counselor and a marriage and family therapist for a term of four (4) years.

(3) When the term of each member ends, the governor shall appoint the successor for a term of four (4) years from qualified candidates. Any vacancy occurring on the board shall be filled by the governor by appointment for the unexpired term. The governor may remove any board member for miscon-

duct, incompetency, or neglect of duty after giving the board member written notice of the charges and an opportunity to be heard thereon.

(4) At all times, the board shall have two (2) members who are licensed as clinical professional counselors or professional counselors and who are engaged primarily in rendering counseling service; one (1) member who is engaged or has been engaged primarily in teaching, training or research in higher education in counseling or marriage and family therapy; one (1) member who is licensed or is eligible for licensure as both a professional counselor and a marriage and family therapist and who is engaged primarily in rendering marriage and family therapy or marriage and family counseling; one (1) member who is licensed as a marriage and family therapist and who is engaged primarily in rendering marriage and family therapy; and one (1) member from the general public. Except for the initial appointment, all members of the board except the member from the general public shall be licensed under this chapter.

(5) No board member shall serve more than two (2) full consecutive terms.

(6) The members of the board shall be compensated as provided in section 59-509(m), Idaho Code.

(7) The board shall annually hold a meeting and elect a chairman and vice chairman from among its members. The board shall meet at such other times as deemed necessary and advisable by the chairman, or by a majority of its members, or by the governor. Notice of all meetings shall be given in the manner prescribed by law. A majority of the board shall constitute a quorum at any meeting or hearing.

History.

I.C., § 54-3403, as added by 1982, ch. 183, § 1, p. 480; am. 1996, ch. 66, § 9, p. 198; am.

2001, ch. 71, § 4, p. 142; am. 2012, ch. 68, § 4, p. 191.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

and secretary from among its members"; and deleted former subsection (9), regarding the duties of the secretary.

Amendments.

The 2012 amendment, by ch. 68, deleted "Beginning July 1, 1982" from the beginning of subsection (2); inserted "clinical professional counselors" near the beginning of subsection (4); deleted former subsection (5), relating to the initial appointees to the board, and renumbered the subsequent subsections accordingly; rewrote the first sentence in subsection (7), which read, "The board shall within sixty (60) days after the effective date of this chapter, and annually thereafter hold a meeting and elect a chairman, vice-chairman

Compiler's Notes.

For more on the Idaho counseling association, see <http://www.idahocounseling.org>.

For more on the Idaho association for marriage & family therapy, see <http://idamft.org>.

The phrase "effective date of this act" in the second sentence in subsection (2) refers to the effective date of S.L. 2001, chapter 71, which was March 22, 2001.

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3404. Idaho state licensing board of professional counselors and marriage and family therapists — Powers. — The board shall have the following powers:

(1) To regulate the practice of professional counselors, clinical profes-

sional counselors, associate marriage and family therapists and marriage and family therapists in the state of Idaho.

(2) To pass upon the qualifications and fitness of applicants for licenses and to adopt rules requiring annual continuing education as a condition for the renewal of licenses issued under this chapter.

(3) To adopt and from time to time revise such rules as may be necessary to carry into effect the provisions of this chapter. Such rules shall include, but not be limited to, a code of ethics for professional counselors and a code of ethics for marriage and family therapists in the state, which shall be adopted in compliance with chapter 52, title 67, Idaho Code.

(4) To review the practice of professional counselors, clinical professional counselors, associate marriage and family therapists and marriage and family therapists licensed under this chapter and charged with a violation of the provisions of this chapter. This review may include the notes of the license holder and other materials related to the practice. The review will remain subject to disclosure according to chapter 3, title 9, Idaho Code, unless the written consent of the client is received by the board.

(5) To establish a peer review system whereby each license holder's practice may be reviewed to ensure continuing practice in an appropriate and ethical manner.

(6) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of applicants pursuant to this chapter, and to conduct hearings in connection therewith.

(7) To conduct hearings to suspend or revoke licenses for violations of the law and rules adopted pursuant to this chapter and cause the prosecution and enjoinder of all such violations.

(8) In any proceeding before the board authorized by this chapter, the board or its designee may administer oaths or affirmations to witnesses appearing before it.

(9) To authorize, by written agreement, the chief of the bureau of occupational licenses as agent to act in its interest.

(10) To provide, by rule, licensed professional counselor, licensed clinical professional counselor, licensed associate marriage and family therapist and licensed marriage and family therapist specialty standards.

History.

I.C., § 54-3404, as added by 1982, ch. 183, § 1, p. 480; am. 1990, ch. 213, § 82, p. 480; am. 1993, ch. 65, § 1, p. 166; am. 1993, ch.

205, § 1, p. 563; am. 2001, ch. 71, § 5, p. 142; am. 2004, ch. 312, § 1, p. 874; am. 2012, ch. 68, § 5, p. 191.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

This section was amended by two 1993 acts — ch. 65, § 1, and ch. 205, § 1, both effective July 1, 1993 — which do not appear to conflict and have been compiled together.

The 1993 amendment, by ch. 65, § 1, added subdivision (10).

The 1993 amendment, by ch. 205, § 1, in subdivision (3) in the second sentence substituted “a” for “the American Personnel and Guidance Association” preceding “code of ethics”; and substituted “which” for “and” preceding “shall be adopted”.

The 2012 amendment, by ch. 68, inserted “clinical professional counselors, associate marriage and family therapists” in subsections (1) and (4) and rewrote subsection (10),

which formerly read, "To provide, by rule, professional counselor and marriage and family therapist specialty standards."

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 pro-

vided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should be effective July 1, 1990.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3405. Qualifications for licensure. — Licensure as a "licensed professional counselor" shall be restricted to persons of good moral character who have successfully completed each of the following requirements:

(1) A planned graduate program of sixty (60) semester hours which is primarily counseling in nature, six (6) semester hours of which are earned in an advanced counseling practicum, and including a graduate degree in a counseling field from an accredited university or college offering a graduate program in counseling.

(2) An examination if required by the board's rules.

(3) One thousand (1,000) hours of supervised experience in counseling acceptable to the board.

(4) A license will not be allowed an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field. Such an individual may not be licensed under this chapter unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that an acceptable degree of rehabilitation has been accomplished.

History.

I.C., § 54-3405, as added by 1982, ch. 183, § 1, p. 480; am. 1999, ch. 152, § 1, p. 425; am.

2001, ch. 83, § 2, p. 205; am. 2005, ch. 46, § 1, p. 175.

54-3405A. Qualifications for licensure. — Licensure as a "licensed clinical professional counselor" shall be restricted to persons who have successfully completed each of the following requirements:

(1) Hold a valid licensed professional counselor license in good standing;

(2) Document two thousand (2,000) hours of direct client contact experience under supervision in no less than a two (2) year period as set forth in this chapter and the rules of the board.

(3) Successful completion of a written examination as approved by the board and defined in rules of the board.

History.

I.C., § 54-3405A, as added by 2012, ch. 68, § 6, p. 191.

STATUTORY NOTES

Prior Laws.

Former § 54-3405A, Qualifications for licensure for licensed pastoral counselors, as

added by 1997, ch. 339, § 1, p. 1014; am. 2001, ch. 83, § 3, p. 205, was repealed by S.L. 2004, ch. 323, § 2.

54-3405B. Qualifications for licensure. — Licensure as a "licensed associate marriage and family therapist" shall be restricted to persons who have successfully completed each of the following requirements:

(1) A graduate degree which consists of at least sixty (60) semester hours or ninety (90) quarter credits in marriage and family therapy from a program accredited by the commission on accreditation for marriage and family therapy education, or a marriage and family counseling or therapy program which is accredited by the council for accreditation of counseling and related educational programs, or a graduate degree from a regionally accredited educational institution and an equivalent course of study as approved by the board. The course of study for any graduate degree shall include a minimum of thirty-nine (39) semester credits in the following areas:

(a) Marriage and family studies — Nine (9) semester credit minimum. Studies in this area shall include:

(i) Theoretical foundations, history, philosophy, etiology and contemporary conceptual directions of marriage and family therapy or marriage and family counseling;

(ii) Family systems theories and other relevant theories and their application in working with a wide variety of family structures, including families in transition, nontraditional families and blended families, and a diverse range of presenting issues; and

(iii) Preventive approaches, including premarital counseling, parent skill training and relationship enhancement, for working with couples, families, individuals, subsystems and other systems.

(b) Marriage and family therapy — Nine (9) semester credit minimum. Studies in this area shall include:

(i) The practice of marriage and family therapy related to theory, and a comprehensive survey and substantive understanding of the major models of marriage and family therapy or marriage and family counseling; and

(ii) Interviewing and assessment skills for working with couples, families, individuals, subsystems and other systems, and skills in the appropriate implementation of systematic interventions across a variety of presenting clinical issues including, but not limited to, socioeconomic disadvantage, abuse and addiction.

(c) Human development — Nine (9) semester credit minimum. Studies in this area shall include:

(i) Individual development and transitions across the life span;

(ii) Family, marital and couple life cycle development and family relationships, family of origin and intergenerational influences, cultural influences, ethnicity, race, socioeconomic status, religious beliefs, gender, sexual orientation, social and equity issues and disability;

(iii) Human sexual development, function and dysfunction, impacts on individuals, couples and families, and strategies for intervention and resolution; and

(iv) Issues of violence, abuse and substance use in a relational context, and strategies for intervention and resolution.

(d) Psychological and mental health competency — Six (6) semester credit minimum. Studies in this area shall include:

(i) Psychopathology, including etiology, assessment, evaluation and treatment of mental disorders, use of the current diagnostic and

- statistical manual of mental disorders, differential diagnosis and multiaxial diagnosis;
- (ii) Standard mental health diagnostic assessment methods and instruments, including standardized tests; and
 - (iii) Psychotropic medications and the role of referral to and cooperation with other mental health practitioners in treatment planning, and case management skills for working with individuals, couples and families.
- (e) Professional ethics and identity — Three (3) semester credit minimum. Studies in this area shall include:
- (i) Professional identity, including professional socialization, professional organizations, training standards, credentialing bodies, licensure, certification, practice settings and collaboration with other disciplines;
 - (ii) Ethical and legal issues related to the practice of marriage and family therapy, legal responsibilities of marriage and family therapy and marriage and family counseling practice and research, business aspects, reimbursement, recordkeeping, family law, confidentiality issues and the relevant codes of ethics, including the code of ethics specified by the board; and
 - (iii) The interface between therapist responsibility and the professional, social and political context of treatment.
- (f) Research — Three (3) semester credit minimum. Studies in this area shall include:
- (i) Research in marriage and family therapy or marriage and family counseling and its application to working with couples and families; and
 - (ii) Research methodology, quantitative and qualitative methods, statistics, data analysis, ethics and legal considerations of conducting research, and evaluation of research.
- (2) Completion of a one (1) year practicum of supervised marriage and family therapy experience, consisting of a minimum of three hundred (300) direct client contact hours, of which one hundred fifty (150) hours shall be with couples or families, as part of the graduate program.
- (3) Successful completion of a written examination as approved by the board and defined by rule.
- (4) A license will not be allowed an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field. Such an individual may not be licensed under this chapter unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that an acceptable degree of rehabilitation has been accomplished.

History.

I.C., § 54-3405B, as added by 2008, ch. 87,
§ 3, p. 239.

STATUTORY NOTES

Compiler's Notes.

Former § 54-3405B, which comprised I.C., § 54-3405B, as added by 1998, ch. 413, § 4, p. 1302; am. 2001, ch. 83, § 4, p. 205, was repealed by S.L. 2005, ch. 46, § 2.

For more on the commission on accredita-

tion for marriage and family therapy education, see <http://www.aamft.org/iMIS15/content/COAMFTE/COAMFTE.aspx=ro>.

For more on the council for accreditation of counseling and related educational programs, see <http://www.cacrep.org>.

54-3405C. Qualifications for licensure. — Licensure as a “marriage and family therapist” shall be restricted to persons who have successfully completed each of the following requirements:

(1) A graduate degree which consists of at least sixty (60) semester hours or ninety (90) quarter credits in marriage and family therapy from a program accredited by the commission on accreditation for marriage and family therapy education, or a marriage and family counseling or therapy program which is accredited by the council for accreditation of counseling and related educational programs, or a graduate degree from a regionally accredited educational institution and an equivalent course of study as approved by the board. The course of study for any graduate degree shall include a minimum of thirty-nine (39) semester credits in the following areas:

(a) Marriage and family studies — nine (9) semester credit minimum. Studies in this area shall include:

(i) Theoretical foundations, history, philosophy, etiology and contemporary conceptual directions of marriage and family therapy or marriage and family counseling;

(ii) Family systems theories and other relevant theories and their application in working with a wide variety of family structures, including families in transition, nontraditional families and blended families, and a diverse range of presenting issues; and

(iii) Preventive approaches, including premarital counseling, parent skill training and relationship enhancement, for working with couples, families, individuals, subsystems and other systems.

(b) Marriage and family therapy — nine (9) semester credit minimum. Studies in this area shall include:

(i) The practice of marriage and family therapy related to theory, and a comprehensive survey and substantive understanding of the major models of marriage and family therapy or marriage and family counseling; and

(ii) Interviewing and assessment skills for working with couples, families, individuals, subsystems and other systems, and skills in the appropriate implementation of systematic interventions across a variety of presenting clinical issues including, but not limited to, socioeconomic disadvantage, abuse and addiction.

(c) Human development — nine (9) semester credit minimum. Studies in this area shall include:

(i) Individual development and transitions across the life span;

(ii) Family, marital and couple life cycle development and family relationships, family of origin and intergenerational influences, cul-

tural influences, ethnicity, race, socioeconomic status, religious beliefs, gender, sexual orientation, social and equity issues and disability;

(iii) Human sexual development, function and dysfunction, impacts on individuals, couples and families, and strategies for intervention and resolution; and

(iv) Issues of violence, abuse and substance use in a relational context, and strategies for intervention and resolution.

(d) Psychological and mental health competency — six (6) semester credit minimum. Studies in this area shall include:

(i) Psychopathology, including etiology, assessment, evaluation and treatment of mental disorders, use of the current diagnostic and statistical manual of mental disorders, differential diagnosis and multiaxial diagnosis;

(ii) Standard mental health diagnostic assessment methods and instruments, including standardized tests; and

(iii) Psychotropic medications and the role of referral to and cooperation with other mental health practitioners in treatment planning, and case management skills for working with individuals, couples and families.

(e) Professional ethics and identity — three (3) semester credit minimum. Studies in this area shall include:

(i) Professional identity, including professional socialization, professional organizations, training standards, credentialing bodies, licensure, certification, practice settings and collaboration with other disciplines;

(ii) Ethical and legal issues related to the practice of marriage and family therapy, legal responsibilities of marriage and family therapy and marriage and family counseling practice and research, business aspects, reimbursement, recordkeeping, family law, confidentiality issues and the relevant codes of ethics, including the code of ethics specified by the board; and

(iii) The interface between therapist responsibility and the professional, social and political context of treatment.

(f) Research — three (3) semester credit minimum. Studies in this area shall include:

(i) Research in marriage and family therapy or marriage and family counseling and its application to working with couples and families; and

(ii) Research methodology, quantitative and qualitative methods, statistics, data analysis, ethics and legal considerations of conducting research, and evaluation of research.

(2) Completion of a one (1) year practicum of supervised marriage and family therapy experience, consisting of a minimum of three hundred (300) direct client contact hours, of which one hundred fifty (150) hours shall be with couples or families, as part of the graduate program.

(3) Supervised experience in marriage and family therapy of three thousand (3,000) hours, acceptable to the board as defined by rule. A minimum of two hundred (200) hours of supervision of the postgraduate experience. Supervision may be provided by a clinical member of the

American association for marriage and family therapy, by a licensed marriage and family therapist, or another qualified licensed professional as determined by the board and defined in rule who has a minimum of five (5) years experience providing marriage and family therapy, including: a licensed clinical professional counselor; licensed psychologist; licensed clinical social worker; or licensed psychiatrist.

(4) Successful completion of a written examination as approved by the board and defined by rule.

(5) A license will not be allowed an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field. Such an individual may not be licensed under this chapter unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that an acceptable degree of rehabilitation has been accomplished.

History.

I.C., § 54-3405C, as added by 2001, ch. 71, § 6, p. 142; am. 2004, ch. 312, § 2, p. 874; am.

2005, ch. 46, § 3, p. 175; am. 2012, ch. 68, § 7, p. 191.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 68, in subsection (3), inserted “and defined in rule” and substituted the current language following “including:” for “a licensed professional counselor, private practice; psychologist; certified social worker, private and independent practice; or psychiatrist.”

tion, see <http://www.aamft.org/iMIS15/content/COAMFTE/COAMFTE.aspx=ro>.

For more on the council for accreditation of counseling and related educational programs, see <http://www.cacrep.org>.

For more on the American association for marriage and family therapy, see <http://www.aamft.org>.

Compiler's Notes.

For more on the commission on accreditation for marriage and family therapy educa-

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3406. Endorsement. — Upon payment of the fee enumerated in this chapter, the board may grant a license to any person who, at the time of application, is licensed or certified as a licensed professional counselor, licensed clinical professional counselor, licensed associate marriage and family therapist or licensed marriage and family therapist by an agency located in another state, territory or foreign country and who meets the qualifications established by board rule.

History.

I.C., § 54-3406, as added by 1982, ch. 183, § 1, p. 480; am. 2001, ch. 71, § 7, p. 142; am.

2001, ch. 83, § 5, p. 205; am. 2012, ch. 68, § 8, p. 191.

STATUTORY NOTES

Amendments.

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 71, § 7, renamed the heading to read “Endorsement”; inserted “as a professional counselor or mar-

riage and family therapist” following “licensed or certified”; and substituted “state” for “counselor”.

The 2001 amendment, by ch. 83, § 5, substituted “and who meets the qualifications established by board rule” for “and which is similar to the counselor licensing boards, pro-

vided that the requirements of such certification or licensure are substantially similar to the requirements of this chapter.”

The 2012 amendment, by ch. 68, inserted “licensed” preceding “professional counselor” and “marriage and family therapist”; inserted “licensed clinical professional counselor, li-

censed associate marriage and family therapist” and inserted “territory or foreign country”.

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3407. Disciplinary proceedings. — Subject to the provisions of chapter 52, title 67, Idaho Code, the board may refuse to issue, refuse to renew, revoke, suspend or otherwise sanction a licensee upon the following grounds:

- (1) Fraud or deception in procuring or renewing the license;
- (2) Conviction of a felony by a court of competent jurisdiction;
- (3) Gross incompetency;
- (4) Fraud or deceit in the performance of official duties;
- (5) For violation of any of the provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter;
- (6) Failure to comply with a board order;
- (7) Having had a license revoked, suspended or otherwise disciplined by the proper authorities of another state, territory or country.

The board may reinstate any revoked or suspended license upon such terms as it may impose.

History.

I.C., § 54-3407, as added by 1982, ch. 183,

§ 1, p. 480; am. 2003, ch. 50, § 1, p. 190; am. 2012, ch. 68, § 9, p. 191.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 68, substituted “suspend or otherwise sanction a licensee” for “suspend a license” in the intro-

ductory paragraph; inserted “or renewing” in subsection (1); and added subsections (6) and (7).

54-3408. Certain acts prohibited. — The following acts shall be unlawful and punishable as a misdemeanor:

- (1) The violation of any of the provisions of this chapter and any rules promulgated pursuant thereto;
- (2) A person representing himself to be a licensed clinical professional counselor or licensed professional counselor or licensed associate marriage and family therapist or licensed marriage and family therapist without having first complied with the provisions of this chapter;
- (3) A person who shall practice or attempt to offer to practice professional counseling or marriage and family therapy, as defined in this chapter, without having at the time of so doing, a valid, unexpired, unrevoked and unsuspended license issued under this chapter or the laws of Idaho or any other state governing mental health professionals.

History.

I.C., § 54-3408, as added by 1982, ch. 183, § 1, p. 480; am. 1998, ch. 413, § 5, p. 1302; am. 1999, ch. 152, § 2, p. 425; am. 2001, ch.

71, § 8, p. 142; am. 2005, ch. 46, § 4, p. 175; am. 2008, ch. 87, § 4, p. 241; am. 2012, ch. 68, § 10, p. 191.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 87, in subsection (2), inserted “associate” and “or licensed marriage and family therapist.”

The 2012 amendment, by ch. 68, substituted “licensed clinical professional coun-

selor” for “licensed counselor” in subsection (2).

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3409. Injunction procedure. — The board or any resident citizen may maintain an action in equity in the name of the state of Idaho to enjoin perpetually any person, firm, company, corporation, partnership, or organization from persisting in the doing of any acts constituting a violation of the provisions of this chapter. Such action shall be brought in the district court of the county in which the act or acts or some of them are claimed to have been or are being committed, by filing a complaint setting forth the acts. The court, or a judge thereof at chambers, if satisfied from such complaint or by affidavits that the acts complained of have been or are being committed and will probably be persisted in, may issue a temporary writ enjoining the defendant from the commission of any such act or acts pending final disposition of the cause. The cause shall proceed as in other cases for injunction. If at the trial the commission of the act or acts by the defendant be established, and the court further finds that it is probable that defendant will continue therein or in similar violations, the court, or a judge thereof at chambers, shall enter a decree perpetually enjoining the defendant from thereafter committing the act or similar acts.

History.

I.C., § 54-3409, as added by 1982, ch. 183, § 1, p. 480.

54-3410. Confidential communication. — Confidentiality of communication between any person licensed under this chapter and client shall be privileged from disclosure as provided in section 9-203, Idaho Code, with the exception of the board review as provided in section 54-3404, Idaho Code.

History.

I.C., § 54-3410A, as added by 1998, ch. 413,

§ 6, p. 1302; am. and redesign. 2001, ch. 71, § 10, p. 142; am. 2012, ch. 68, § 11, p. 191.

STATUTORY NOTES

Prior Laws.

Former § 54-3410, which comprised I.C., § 54-3410, as added by 1982, ch. 183, § 1, p. 480, was repealed by S.L. 2001, ch. 71, § 9.

Amendments.

The 2012 amendment, by ch. 68, substituted “with the exception of the board review as provided” for “with the exception of the board of review provided.”

Compiler’s Notes.

This section was formerly compiled as § 54-3410A.

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3410A. Informed consent and information disclosure to clients. — Informed consent involves a licensee’s reasonable disclosure of

information to clients and the discussion of such information with clients so that they are agreeing to treatment with knowledge of the material facts necessary to make the decision. Persons licensed under this chapter shall provide to each client at the beginning and at other appropriate times within the context of the counseling or therapy an accurate and informative description that allows the client to make an informed decision about the client's care. The specific minimum requirements of a documented record of the disclosure shall be defined in the rules of the board.

History.

I.C., § 54-3410B, as added by 1998, ch. 413,

§ 7, p. 1302; am. and redesign. 2001, ch. 71, § 11, p. 142; am. 2012, ch. 68, § 12, p. 191.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 68, added "Informed consent and" in the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

Former § 54-3410A, as added by S.L. 1995, ch. 413, § 6, was redesignated as § 54-3410 by S.L. 2001, ch. 71, § 10.

Compiler's Notes.

This section was formerly compiled as § 54-3410B.

54-3410B. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

This section is amended and redesignated

as § 54-3410A, effective March 22, 2001, pursuant to S.L. 2001, ch. 71, § 11.

54-3411. Fees on licensure. — The board shall establish fees for licensure under the provisions of this chapter as follows:

- (1) The fee for applications not to exceed one hundred dollars (\$100).
- (2) The fee for examination, when required, equal to that charged by the national examining entity plus an administration fee not to exceed twenty-five dollars (\$25.00).
- (3) The fee for endorsement not to exceed one hundred dollars (\$100).
- (4) The fee for the original license not to exceed one hundred dollars (\$100).
- (5) The fee for annual renewal not to exceed one hundred dollars (\$100).
- (6) The fee for the original registration of interns not to exceed twenty-five dollars (\$25.00).
- (7) Fees under subsection (2) or (3) of this section shall be in addition to the application fee.
- (8) All fees paid pursuant to this section shall be nonrefundable.

History.

I.C., § 54-3411, as added by 1982, ch. 183, § 1, p. 480; am. 1999, ch. 152, § 3, p. 425; am.

2001, ch. 71, § 12, p. 142; am. 2001, ch. 83, § 6, p. 205; am. 2003, ch. 50, § 2, p. 190; am. 2005, ch. 46, § 5, p. 175.

STATUTORY NOTES**Amendments.**

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 71, § 12, in subsection (3), substituted “endorsement” for “reciprocity” and made a minor stylistic change.

The 2001 amendment, by ch. 83, § 6, made the exact change as ch. 71, § 12.

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3412. Disposition of receipts — Expenses. — All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational license account in the dedicated fund and all costs and expenses incurred by the board under the provisions of this chapter shall be a charge against and paid from the account for such purposes, and the funds collected hereunder shall be immediately available for the administration of this chapter, the provisions of any other law notwithstanding. In no instance will the occupational license account be obligated to pay any claims which in aggregate with claims already paid exceed the income to the occupational license account which has been derived by the application of this chapter.

The money paid into the occupational license account is continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and in carrying out and enforcing the provisions of this chapter.

History.

I.C., § 54-3412, as added by 1982, ch. 183, § 1, p. 480; am. 2012, ch. 68, § 13, p. 191.

STATUTORY NOTES**Cross References.**

Occupational licenses account, § 67-2605.

Amendments.

The 2012 amendment, by ch. 68, deleted “Refund” from the end of the section heading.

54-3413. Administration by bureau of occupational licenses. — This chapter shall be administered by the bureau of occupational licenses.

History.

I.C., § 54-3413, as added by 1982, ch. 183, § 1, p. 480.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

54-3414. Powers and duties of bureau of occupational licenses. — The bureau of occupational licenses shall have the following powers and duties:

(1) To accept applications for and issue licenses to professional and clinical professional counselors, associate marriage and family therapists, and marriage and family therapists pursuant to requirements of this chapter.

(2) To maintain in a registry appropriate for that purpose a public record of all applications for licenses, the action of the department thereon, of all licenses issued and of all licenses revoked or forfeited with the reasons for such revocation or forfeiture and of all renewals.

(3) To forward complaints against a licensed professional counselor, a licensed clinical professional counselor, a licensed associate marriage and family therapist or a licensed marriage and family therapist to the state licensing board for review and investigation.

(4) To assist in the investigation and prosecution of complaints filed against a licensed professional counselor, a licensed clinical professional counselor, a licensed marriage and family therapist or a licensed associate marriage and family therapist under section 54-3408, Idaho Code.

(5) At the discretion of the chief of the bureau and upon apparent failure or refusal of the state licensing board to investigate or prosecute a complaint against a licensed professional counselor, a licensed clinical professional counselor, a licensed marriage and family therapist or a licensed associate marriage and family therapist, to investigate the complaint and forward the report of investigation to the state licensing board and upon apparent failure or refusal of the state licensing board to take further action, to file an action in the district court under section 54-3408, Idaho Code, against a licensed professional counselor, a licensed clinical professional counselor, a licensed marriage and family therapist or a licensed associate marriage and family therapist violating the terms of this chapter.

History.

I.C., § 54-3414, as added by 1982, ch. 183, § 1, p. 480; am. 2001, ch. 71, § 13, p. 142; am.

2008, ch. 87, § 5, p. 241; am. 2012, ch. 68, § 14, p. 191.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2008 amendment, by ch. 87, in subsection (1), inserted “associate marriage and family therapists”; in subsection (3), inserted “a licensed associate marriage and family therapist” and the last occurrence of “licensed”; and, in subsection (4) and twice in subsection (5), substituted “licensed counselor or a licensed marriage and family therapist or a licensed associate marriage and family ther-

apist” for “counselor or a marriage and family therapist”.

The 2012 amendment, by ch. 68, substituted “professional and clinical professional counselors” for “counselors” in subsection (1); inserted “a licensed clinical professional counselor” in subsections (3) and (4), and twice in subsection (5); substituted “licensed professional counselor” for “licensed counselor” in subsection (4) and twice in subsection (5).

Effective Dates.

Section 14 of S.L. 2001, ch. 71 declared an emergency. Approved March 22, 2001.

54-3415. Renewal or reinstatement of license. — All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License re-

newal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

History.

I.C., § 54-3415, as added by 1982, ch. 183,
§ 1, p. 480; am. 2003, ch. 21, § 18, p. 77.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 1982, ch. 183 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or

the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CHAPTER 35

DIETITIANS

SECTION.

- 54-3501. Purpose.
- 54-3502. Definitions.
- 54-3503. License required.
- 54-3504. Dietetic licensure board created — Appointment — Terms.
- 54-3505. Board of medicine and dietetic licensure board — Powers and duties — Funds.

SECTION.

- 54-3506. Requirements for licensure.
- 54-3507. Examination for licensure.
- 54-3508. Waiver of requirements.
- 54-3509. License expiration and renewal.
- 54-3510. Suspension and revocation of license.
- 54-3511. Penalties.
- 54-3512. Inapplicability of chapter.

54-3501. Purpose. — The legislature finds and declares that the provision of medical and therapeutic nutritional services affects the public health, safety, and welfare. The legislature further finds that it is in the public interest to aid in the provision of medical and therapeutic nutritional services of high quality to the people of Idaho. To aid in fulfilling these purposes, this chapter provides for the licensure and regulation of dietitians within the state of Idaho.

History.

I.C., § 54-3501, as added by 1994, ch. 217,
§ 1, p. 674.

54-3502. Definitions. — As used in this chapter:

- (1) "Board" means the Idaho state board of medicine.
- (2) "Dietitian" or "dietician" are interchangeable terms and means a person licensed under the provisions of this chapter.
- (3) "Licensure board" means the dietetic licensure board established by this chapter.
- (4) "Provisionally licensed dietitian" means a person provisionally licensed under the provisions of this chapter.

History.

I.C., § 54-3502, as added by 1994, ch. 217,
§ 1, p. 674.

54-3503. License required. — (1) From and after the 1st day of

January, 1995, it is unlawful for any person to assume or use the title or designation of "dietitian," "certified dietitian," "registered dietitian," or any other combination of terms which include the title "dietitian," unless such person has been issued a license pursuant to this chapter and the license is in good standing pursuant to rules of the board. Nothing contained herein shall be construed to prohibit the use of the term "dietetic" or "diet" as a descriptive term in connection with a person's occupation or employment.

(2) No person shall use any other title, designation, words, letters, abbreviations, or sign, card or device which indicates to the public that such person is a dietitian or has been issued a temporary permit pursuant to this chapter unless the person is so licensed or has been issued such permit, and the license or permit is in good standing pursuant to rules of the board.

(3) A person who is a registered dietitian, as determined by the commission on dietetic registration of the American dietetic association [academy of nutrition and dietetics], or, who is credentialed as a dietitian by any other association which is also recognized by the national commission for health certifying agencies, may continue to use such credential without being licensed pursuant to this chapter as long as the person does not engage in activities set forth in section 54-3505(3), Idaho Code.

History.

I.C., § 54-3503, as added by 1994, ch. 217,
§ 1, p. 674.

STATUTORY NOTES

Compiler's Notes.

The American dietetic association, referred to in subsection (3), officially changed its name to the academy of nutrition and dietetics in January, 2012.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

54-3504. Dietetic licensure board created — Appointment — Terms. — (1) A dietetic licensure board is hereby created and the members thereof shall be appointed by the Idaho state board of medicine within sixty (60) days following the effective date of this chapter.

(2) The dietetic licensure board shall consist of four (4) members, three (3) of whom shall be dietitians and one (1) member shall be a member of the public with an interest in the rights of the consumer of health care services.

(3) In making appointments to the dietetic licensure board, the board shall give consideration to recommendations made by the Idaho dietetic association [Idaho academy of nutrition & dietetics], other professional organizations and dietitians and physicians.

(4) All members of the dietetic licensure board shall be current residents of the state of Idaho and have been residents of the state of Idaho for a minimum of three (3) years immediately preceding appointment.

(5) The initial three (3) dietitian members of the dietetic licensure board shall be persons registered by the commission on dietetic registration, American dietetic association, who are eligible to become licensed pursuant to this chapter, and who shall, within such time, as may be established by the board, become licensed pursuant to this chapter.

(6) The initial dietetic licensure board shall be appointed for staggered terms, the longer of which will not exceed four (4) years. After the initial appointments, all terms shall be four (4) years, and a member may be reappointed. In the event of death, resignation, or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(7) The board may, upon recommendation of the dietetic licensure board, or upon its own motion, remove any member of the dietetic licensure board, for cause, prior to the expiration of the member's term.

(8) The dietetic licensure board shall, within thirty (30) days after its appointment, and at least annually thereafter, hold a meeting and elect a chairperson. The licensure board may hold additional meetings on the call of the chairperson or at the written request of any two (2) members of the licensure board. The licensure board may appoint such committees as it considers necessary to carry out its duties. A majority of the members of the licensure board shall constitute a quorum.

(9) Each member of the licensure board shall be compensated as provided in section 59-509(n), Idaho Code.

History.

I.C., § 54-3504, as added by 1994, ch. 217,
§ 1, p. 674; am. 2012, ch. 91, § 1, p. 253.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Amendments.

The 2012 amendment, by ch. 91, substituted "section 59-509(n)" for "section 59-509(h)" in subsection (9).

Compiler's Notes.

The phrase "effective date of this chapter" in subsection (1) refers to the effective date of S.L. 1994, ch. 217, which was July 1, 1994.

The American dietetic association, referred to in subsection (3), officially changed its name to the academy of nutrition and dietetics in January, 2012.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

The bracketed insertion in subsection (3) was added by the compiler to reflect the official change of name of the former Idaho dietetic association to the Idaho academy of nutrition & dietetics. See <http://eatrightidaho.org>.

54-3505. Board of medicine and dietetic licensure board — Powers and duties — Funds. — (1) The board of medicine shall administer, coordinate, and enforce the provisions of this chapter, and, for that purpose, may hire such employees as may be necessary. The dietetic licensure board shall make recommendations to, and consult with, the board concerning qualification of applicants for licensure, issuance of licenses, revocation of licenses and rules to be promulgated under this chapter.

(2) The board of medicine shall, upon recommendation of the dietetic licensure board, adopt rules, pursuant to chapter 52, title 67, Idaho Code, necessary to implement the provisions of this chapter including, but not limited to, rules relating to professional licensure, examination, the establishment of ethical standards of practice, disciplinary proceedings, license

suspension or revocation for persons holding a license to practice dietetics in this state.

(3) The board of medicine, in performing its duties pursuant to this chapter, shall, for the purpose of providing for the determination of the qualifications of applicants for licensure, as it relates to the educational, preprofessional practice programs or dietetic internships, or as it relates to the examination requirements for applicants, the establishment of ethical standards of practice, or the conducting or determining disciplinary proceedings, consider the following definitions to apply to such applicants and to persons licensed pursuant to this chapter:

(a) "Dietetic practice," "practice of dietetics," or "practice dietetics," means the integration and application of principles derived from the sciences of nutrition, biochemistry, food physiology, management, and behavioral and social sciences to achieve and maintain human health through the provision of medical nutrition services and the development of therapeutic nutrition care plans to assist in the maintenance of health and the prevention and treatment of disorders of body functions, systems or organs.

(b) "Medical nutrition services" means nutritional assessment, the design and implementation of therapeutic nutrition care plans, and nutrition therapy counseling.

(c) "Nutritional assessment" means the evaluation of nutritional needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data which is necessary to determine nutrient needs and to recommend appropriate enteral or parenteral nutritional intake.

(d) "Therapeutic nutrition care plan" means:

(i) Design and implementation of nutrition goals and objectives for individuals and groups for the maintenance of health and prevention of disease;

(ii) Design and implementation of therapeutic nutrition regimens, including enteral and parenteral nutrition for the treatment of disorders of body functions, systems or organs;

(iii) Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(iv) Developing, implementing, and managing nutrition care systems; or

(v) Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(e) "Nutrition therapy counseling" means advising or assisting individuals or groups on appropriate nutrient intake by integrating information from the nutritional assessment and therapeutic nutrition care plan with information on food and other sources of nutrients and meal preparation consistent with health needs, disease state, psychosocial status, cultural background, and available resources.

(4) The dietetic licensure board shall hold meetings, conduct hearings and keep records and minutes as are necessary to carry out its functions.

(5) All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the state board of medicine

fund created in section 54-1809, Idaho Code, and all costs and expenses incurred by the board and dietetic licensure board under the provisions of this chapter shall be a charge against and paid from said fund for such purposes, and the funds collected hereunder shall be immediately available for the administration of this chapter. In no instance shall the state board of medicine fund be obligated to pay any claims which, in aggregate with claims already allowed, exceed the income to the state board of medicine fund which has been derived from the application of this chapter. Money paid into the state board of medicine fund pursuant to this chapter is hereby continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and dietetic licensure board in carrying out and enforcing the provisions of this chapter.

History.

I.C., § 54-3505, as added by 1994, ch. 217,
§ 1, p. 674.

STATUTORY NOTES**Compiler's Notes.**

The bracketed parenthesis, at the begin-

ning of paragraph (3)(d), was added by the compiler.

54-3506. Requirements for licensure. — A person applying for a license shall file a written application provided by the board showing to the satisfaction of the board that such person meets the following requirements:

(1) Has successfully completed the academic requirements of an education program in dietetics approved by the licensure board; and

(2) Has successfully completed a dietetic internship or preprofessional practice program, coordinated program, or such other equivalent experience as may be approved by the licensure board.

(3) Has passed an examination as provided in section 54-3507, Idaho Code.

History.

I.C., § 54-3506, as added by 1994, ch. 217,
§ 1, p. 674.

54-3507. Examination for licensure. — (1) Each applicant for licensure shall be examined in such manner as the licensure board may require to determine the applicant's fitness to practice dietetics.

(2) Applicants for licensure shall be examined at a time and place and under such supervision as the licensure board may require. Examinations shall be given at least twice each year at such places as the board may determine.

History.

I.C., § 54-3507, as added by 1994, ch. 217,
§ 1, p. 374.

54-3508. Waiver of requirements. — (1) The licensure board shall grant a license to any person who, on the effective date of this chapter, is

registered as a dietitian by and with the commission on dietetic registration for the American dietetic association [academy of nutrition & dietetics], a member of the national commission for health certifying agencies.

(2) The licensure board may waive the examination, education, or experience requirements and grant a license to any person registered by the commission after the effective date of this chapter if the board determines the requirements for such registration to be equivalent to the requirements for licensure set forth in this chapter.

(3) The licensure board may waive the examination, education, or experience requirements and grant a license to any applicant who shall present proof of current licensure to engage in the practice of dietetics in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure pursuant to this chapter.

History.

I.C., § 54-3508, as added by 1994, ch. 217,
§ 1, p. 674.

STATUTORY NOTES

Compiler's Notes.

The American dietetic association, referred to in subsection (3), officially changed its name to the academy of nutrition and dietetics in January, 2012.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

The phrase "effective date of this chapter" in subsections (1) and (2) refers to the effective date of S.L. 1994, chapter 217, which was July 1, 1994.

54-3509. License expiration and renewal. — (1) A license issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the rules of the licensure board, upon payment of a renewal fee.

(2) The board shall establish the following fees relating to licensing, which fees shall be established in an amount which is sufficient to defray all costs necessary for the administration of this chapter:

- (a) Initial license and examination fee;
- (b) Renewal of license fee;
- (c) Inactive license fee;
- (d) Limited permit fee;
- (e) Late renewal fees.

(3) No license which has been expired for more than twenty-four (24) months, may be renewed. The applicant shall comply with the requirements of section 54-3506, Idaho Code, for obtaining an initial license.

History.

I.C., § 54-3509, as added by 1994, ch. 217,
§ 1, p. 674.

54-3510. Suspension and revocation of license. — The board, in accordance with the requirements of chapter 52, title 67, Idaho Code, may, upon recommendation of the licensure board, refuse to issue a license or

permit, refuse to renew a license or permit, or may suspend or revoke a license or permit, under such conditions as the board may determine, if the licensee, permittee or applicant for license:

- (1) Has been convicted of a felonious act, or crime involving moral turpitude;
- (2) Obtained a license or permit pursuant to this chapter by means of fraud, misrepresentation or concealment of material facts;
- (3) Engaged in the practice of dietetics in a manner which does not meet the generally accepted standards for the practice of dietetics within the state of Idaho;
- (4) Has failed to maintain the confidentiality of medical records or other medical information pertaining to identifiable patients, except as required or authorized by law;
- (5) Engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the dietitian by the patient.

History.

I.C., § 54-3510, as added by 1994, ch. 217,
§ 1, p. 674.

54-3511. Penalties. — (1) A person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor.

(2) The representation to another person that a person is licensed pursuant to this chapter, when such representation is untrue, constitutes the using of a method, act, or practice which is declared to be unlawful under the provisions of chapter 66 [chapter 6], title 48, Idaho Code.

History.

I.C., § 54-3511, as added by 1994, ch. 217,
§ 1, p. 674.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none pre-
scribed, § 18-113.

subsection (2) was inserted by the compiler, as
that appears to be the reference intended.

Compiler's Notes.

The bracketed reference to "chapter 6" in

54-3512. Inapplicability of chapter. — (1) This chapter shall not be construed to prevent any person from engaging in activities set forth in section 54-3505(3), Idaho Code, or from rendering advice, guidance or counsel regarding medical nutrition service, therapeutic nutrition care, nutritional assessments, nutrition therapy counseling, weight control services, or from providing nutrition information in connection with the marketing and distribution of a food product, dietary supplement, or wellness/exercise program.

(2) This chapter shall not be construed to prevent any person licensed or registered in this state, pursuant to any other law of the state, from

engaging in the profession or occupation for which such person is licensed or registered.

History.

I.C., § 54-3512, as added by 1994, ch. 217,
§ 1, p. 674.

STATUTORY NOTES**Compiler's Notes.**

Section 2 of S.L. 1994, ch. 217 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or

the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CHAPTER 36**IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION****SECTION.**

- 54-3601. Declaration of policy.
- 54-3602. Commission created.
- 54-3603. Definitions.
- 54-3604. Commission members — Appointment.
- 54-3605. Powers and duties of commission.
- 54-3606. Research — Investigation.
- 54-3606A. Promotion of Idaho grape products.

SECTION.

- 54-3607. Commission account.
- 54-3608. Bond of administrator.
- 54-3609. State not liable.
- 54-3610. Imposition of tax and provision for late fees.
- 54-3611. Opt out alternative.
- 54-3612. Severability.

54-3601. Declaration of policy. — It is in the best interest of the people of the state of Idaho that the abundant and natural resources of Idaho be protected and fully developed. It is in the public interest to protect the public health, prevent fraudulent practices, provide for the development of markets, production research, and promotion of Idaho grapes and grape by-products. The legislature recognizes the vital contributions of agricultural and tourist industries to the economy of this state and declares the intent of this chapter is to enhance, diversify and develop these industries by encouraging the planting and development of native vineyards and the production of wines made from the grapes, fruits and berries of the state of Idaho.

History.

I.C., § 54-3601, as added by 1984, ch. 42,
§ 1, p. 67.

54-3602. Commission created. — There is hereby created in the department of self-governing agencies an Idaho grape growers and wine producers commission, to be thus known and designated. The commission shall be composed of three (3) grape growers and two (2) wine producers.

The three (3) grower members shall be citizens and residents of this state, over the age of twenty-one (21) years, each of whom is and has been actively engaged in the growing and producing of grapes within the state of Idaho.

The two (2) wine producer members shall be persons who, either individ-

ually or as executive officers of a corporation, firm, partnership, association or cooperative organization are and have been actively engaged as producers of wine within the state of Idaho, are citizens and residents of this state; and are over the age of twenty-one (21) years.

The qualifications of members of the commission must continue during their term of office. No member of the commission shall receive any salary or other compensation, but each member of the commission, when commission funds are duly appropriated, shall be compensated as provided in section 59-509(d), Idaho Code.

History.

I.C., § 54-3602, as added by 1984, ch. 42,
§ 1, p. 67.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

54-3603. Definitions. — As used in this chapter:

(1) “Account” means the Idaho grape growers and wine producers account in the dedicated fund.

(2) “Commission” means the Idaho grape growers and wine producers commission.

(3) “Grower” means any person who owns, operates or plants a native vineyard of four (4) or more acres.

(4) “Idaho grape product” means juices, raisins, wines and other grape by-products produced in Idaho and grapes grown in Idaho for the production of juices, raisins, wines and other grape by-products.

(5) “Native vineyard” means acreages planted in vinifera and/or other grapes cultivated primarily for the purpose of vinification.

(6) “Person” means any partnership, association, corporation, cooperative or other business unit or device.

(7) “Producer” means any person who owns, operates or conducts a bonded winery within this state where at least five hundred (500) cases of wine per year are vinified in whole or in part for sale.

(8) “Winery” means a place, premises and/or establishment within the state of Idaho for the manufacture and/or bottling of wine for sale.

History.

I.C., § 54-3603, as added by 1984, ch. 42, § 1, p. 67; am. 1991, ch. 319, § 1, p. 830; am. 2012, ch. 30, § 1, p. 88.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 30, added subsection (4) and redesignated the subsequent subsections accordingly.

54-3604. Commission members — Appointment. — Grower and producer members of the commission shall be selected as follows:

(1) The governor shall appoint three (3) grower members and two (2) producer members.

(2) The three (3) grower members shall be appointed to one (1), two (2) and three (3) year terms, respectively. The two (2) producer members shall be appointed to two (2) and three (3) year terms, respectively. Members shall be selected from nominations made by growers and producers as follows:

(a) Prior to July 1, the growers of the state shall convene for the purpose of nominating grower commission members. The growers of the state shall nominate at least three (3) and no more than six (6) growers and submit the names to the governor.

(b) Prior to July 1, the producers shall convene for the purpose of nominating producer commission members. The producers shall nominate at least two (2) and no more than four (4) producers and submit the names to the governor.

Initial commission members shall commence their terms, August 1, 1991. Terms of commission members thereafter shall be for three (3) years.

(3) Members of the commission may not serve more than two (2) consecutive terms; provided, upon serving two (2) consecutive terms, and the lapse of one (1) full term, such member may again be appointed to the commission.

(4) Commission members currently serving shall continue to serve until reappointed or until a new commission member is appointed.

(5) In the event there are vacancies in the commission, the governor shall make the appointment or appointments to fill the vacancy.

History.

§ 1, p. 67; am. 1991, ch. 319, § 2, p. 830; am. I.C., § 54-3604, as added by 1984, ch. 42, 2005, ch. 320, § 1, p. 987.

54-3605. Powers and duties of commission. — The commission shall have, but is not limited to, the following powers and duties:

(1) To elect a chairman and such other officers as it deems advisable.

(2) To appoint and employ, and at its pleasure discharge, all necessary agents, employees and professional personnel and other personnel, including experts in agriculture and the publicizing of wines and to prescribe their duties and fix their compensation.

(3) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this act.

(4) To find new markets for Idaho grape products.

(5) To give, publicize and promulgate reliable information showing the value of Idaho grape products for any purpose for which they are found useful and profitable.

(6) To investigate and participate in studies of the problems to the growers of grapes in the state of Idaho.

(7) To take such action as the commission deems necessary or advisable in order to promote Idaho grape products.

(8) To enter into such contracts as may be necessary or advisable.

(9) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state of Idaho.

(10) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or the United States, engaged in work or activity similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity and reciprocal enforcement of these objects.

(11) To protect brands, marks, packages, brand names or trademarks being promoted by the commission.

(12) To do any and all things that will promote Idaho grape products.

(13) To keep an accurate record of all its dealings, which shall be open to inspection by the state controller.

(14) To sue and be sued.

(15) To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and performance of its duties under this act.

History.

I.C., § 54-3605, as added by 1984, ch. 42,

§ 1, p. 67; am. 1994, ch. 180, § 105, p. 420; am. 2012, ch. 30, § 2, p. 88.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

compiled as §§ 54-3601 to 54-3609 and 54-3612.

Amendments.

The 2012 amendment, by ch. 30, substituted "Idaho grape products" for "grapes and grape products" in subsections (4) and (5) and substituted "Idaho grape products" for "grapes for juices, raisins, wines and other grape by-products" at the end of subsections (7) and (12).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 105 of S.L. 1994, ch. 180 became effective January 2, 1995.

Compiler's Notes.

The term "this act" in subsections (3) and (15) refers to S.L. 1984, ch. 42, which is

54-3606. Research — Investigation. — The commission shall provide for and conduct comprehensive and extensive research, advertising and educational campaigns as the Idaho grape product sales and market conditions reasonably require. It will investigate and ascertain the needs of growers, conditions of the market and extent to which public convenience and necessity require research and advertising.

History.

I.C., § 54-3606, as added by 1984, ch. 42, § 1, p. 67; am. 2012, ch. 30, § 3, p. 88.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 30, substituted "Idaho grape product sales" for "grape

crop and wine product sales" in the first sentence.

54-3606A. Promotion of Idaho grape products. — (1) In addition to

the powers and duties set forth in section 54-3605, Idaho Code, the commission shall have, but is not limited to, the following powers to promote Idaho grape products:

- (a) To host, sponsor or participate in activities and events dispensing or serving Idaho grape products to retailers, distributors, importers, evaluators, judges and members of the public. The commission may charge an admission charge to an activity or event.
 - (b) To host, sponsor or participate in activities and events promoting new markets for Idaho grape products, publicizing reliable information showing the value of Idaho grape products, or promoting research or education benefiting Idaho grape products and Idaho producers, wineries and growers. The commission may charge an admission charge to an activity or event.
 - (c) To solicit and receive donations of Idaho grape products for the purpose of promoting Idaho grape products.
 - (d) To purchase Idaho grape products for the purpose of promoting Idaho grape products.
 - (e) To donate Idaho grape products to activities, events, trade groups and other individuals and entities for the purpose of promoting Idaho grape products.
 - (f) To donate Idaho grape products to persons or associations for benevolent, charitable or public purposes, subject to the provisions of section 23-1336, Idaho Code.
- (2) Notwithstanding any other provision of law including, but not limited to, chapter 13, title 23, Idaho Code, the following shall apply to the commission's activities under this section:
- (a) The commission and the property owner, lessee and operator shall not be required to hold or obtain any license, permit or registration or to provide any notification to a public official to enable the commission, commission members, volunteers authorized by the commission and commission employees to engage in the activities authorized by this section.
 - (b) The activities of the commission, volunteers authorized by the commission, commission members and commission employees authorized by this section include, but are not limited to, dispensing or serving samples of wine on premises not licensed for the sale of wine by the individual glass or opened bottle.
- (3) In the performance of activities authorized by this section, the commission shall observe the following limitations:
- (a) The commission shall not receive any payment for the Idaho grape products it serves, dispenses or donates under this section. The receipt of an admission charge to an activity or event is not the receipt of payment by the commission for Idaho grape products for the purposes of this section.
 - (b) Individuals not serving as commission members, acting as volunteers authorized by the commission, or who are not commission employees are not authorized by this section to serve or dispense Idaho grape products. Nothing in this section shall prohibit an individual who is otherwise

authorized by law to serve or dispense Idaho grape products from serving or dispensing such Idaho grape products.

(c) Where the commission dispenses or serves wine, the persons dispensing or serving wine and the recipients of the wine dispensed or served must be of legal drinking age.

History.

I.C., § 54-3606A, as added by 2012, ch. 30,
§ 4, p. 88.

54-3607. Commission account. — (1) The commission may accept tax receipts, grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this act, which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this act or as provided by law shall be paid to the commission and shall be deposited into a bank account in the name of the Idaho grape growers and wine producers commission. Moneys in the bank account are continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this chapter. Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by one (1) officer designated by the commission. The commission shall establish and maintain an adequate and reasonable system of internal accounting controls. The internal accounting controls shall be written, approved and periodically reviewed by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

History.

I.C., § 54-3607, as added by 1984, ch. 42, § 1, p. 67; am. 1991, ch. 319, § 3, p. 830; am.

1995, ch. 204, § 1, p. 698; am. 2003, ch. 32, § 27, p. 115; am. 2009, ch. 59, § 1, p. 164.

STATUTORY NOTES**Cross References.**

Director of legislative services, § 67-428.
Division of financial management, § 67-1910.
Legislative council, § 67-427 et seq.
State controller, § 67-1001 et seq.

tion (2), in the first sentence, substituted "one (1) officer" for "two (2) officers," and added the last two sentences.

Compiler's Notes.

The term "this act" in subsection (1) refers to S.L. 1984, ch. 42, which is compiled as §§ 54-3601 to 54-3609 and 54-3612.

Amendments.

The 2009 amendment, by ch. 59, in subsec-

54-3608. Bond of administrator. — The administrator, or any agent or employee appointed by the commission, shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this chapter.

History.

I.C., § 54-3608, as added by 1984, ch. 42, § 1, p. 67.

54-3609. State not liable. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof, or any officer, agent or employee thereof.

History.

I.C., § 54-3609, as added by 1984, ch. 42, § 1, p. 67.

54-3610. Imposition of tax and provision for late fees. — (1) From and after the first day of July, 1995, there is hereby levied and imposed a tax payable to the commission on the production of wine, and on all grapes grown in Idaho for the production of wine, and on grapes purchased outside the state for production of wine in Idaho. The commission shall set the tax by rule and the minimum tax to each grower for grapes grown in Idaho shall be set at one hundred dollars (\$100) annually. The tax on each winery for the production of wine shall be set at a minimum of one hundred dollars (\$100) annually. Grapes and grape juice purchased from producers outside Idaho shall be taxed at a minimum of five dollars (\$5.00) per ton or per one hundred sixty-seven (167) gallons or any portion thereof. The purchasers of such grapes grown or grape juice produced outside the state shall be responsible for submitting the tax to the commission.

(2) Any person or firm who makes payment to the commission at a date later than that prescribed in this section or by rule may be subject to a late payment penalty as set forth by the commission by rule. Such penalty shall not exceed the rate of fifteen percent (15%) per annum on the amount due. In addition to the above penalty, the commission shall be entitled to recover

all costs, fees, and reasonable attorney’s fees incurred in the collection of the tax and penalty provided for in this section.

History. § 2, p. 698; am. 2005, ch. 335, § 1, p. 1052; I.C., § 54-3610, as added by 1995, ch. 204, am. 2009, ch. 60, § 1, p. 165.

STATUTORY NOTES

Prior Laws. Former § 54-3610, which comprised I.C. § 54-3610 as added by 1984, ch. 42, § 1, p. 67, was repealed by S.L. 1991, ch. 319, § 4.

Amendments. The 2009 amendment, by ch. 60, in subsection (1), in the first sentence, inserted “the production of wine, and on,” and rewrote the second and third sentences, which formerly read: “The commission shall set the tax by rule and the tax on each acre of grapes grown in Idaho shall not exceed twenty-five dollars (\$25.00) per acre annually. The tax on each winery shall not exceed three hundred dollars (\$300) annually,” and, in the fourth sentence, substituted “taxed at a minimum of five dollars (\$5.00) per ton” for “taxed in an amount not to exceed twenty-five dollars (\$25.00) per ton.”

54-3611. Opt out alternative. — (1) Each and every year, any grower or producer may, at his election, opt out of application of all provisions of this chapter, including assessment provisions. In order to opt out of application of the provisions of this chapter, a grower or producer shall comply with the following requirements:

(a) On an annual basis, no later than June 30 of each year, submit a letter to the Idaho grape growers and wine producers commission, stating intent to opt out of application of the provisions of the chapter for the upcoming fiscal year; and

(b) The letter shall include the grower’s or producer’s name and address.

(2) The Idaho grape growers and wine producers commission shall post the address of the commission on its official website. The commission shall also set forth its mailing address by rule.

History. I.C., § 54-3611, as added by 2006, ch. 28, § 1, p. 89.

STATUTORY NOTES

Prior Laws. Former § 54-3611, which comprised I.C., §§ 54-3610 and 54-3611, as added by 1984, ch. 42, § 1, p. 67, was repealed by S.L. 1991, ch. 319, § 4.

54-3612. Severability. — This act shall be liberally construed and if any part or portion thereof shall be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this act, and/or the application thereof to any person, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of this act if possible.

History. I.C., § 54-3612, as added by 1984, ch. 42, § 1, p. 67.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1984, ch.

42, which is compiled as §§ 54-3601 to 54-3609 and 54-3612.

CHAPTER 37

OCCUPATIONAL THERAPY PRACTICE ACT

SECTION.

- 54-3701. Legislative intent.
- 54-3702. Definitions.
- 54-3703. License required.
- 54-3704. Exemptions.
- 54-3705. Limited permit — And temporary license.
- 54-3706. Requirements for licensure.
- 54-3707. Application for licensure.
- 54-3708. Examination for licensure of occupational therapists and occupational therapy assistants.
- 54-3709. Waiver of requirements — License endorsement.
- 54-3710. Issuance of license.
- 54-3711. Renewal and reinstatement of license.

SECTION.

- 54-3712. Fees.
- 54-3713. Suspension and revocation of license — Refusal to renew.
- 54-3714. Licensure board.
- 54-3715. Supervision.
- 54-3716. Complaints.
- 54-3717. Occupational therapy licensure board of Idaho — Powers and duties.
- 54-3718. Grounds for unprofessional conduct.
- 54-3719. Disposition of receipts — Expenses.
- 54-3720. Penalties and disciplinary actions.
- 54-3721. Occupational therapy licensure fund. [Repealed.]
- 54-3722. Severability.

54-3701. Legislative intent. — In order to promote the public health, safety, and welfare; to promote the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and to assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services to the public.

History.

I.C., § 54-3701, as added by 1987, ch. 69,
§ 1, p. 123; am. 2009, ch. 222, § 1, p. 691.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, substituted "chapter" for "act."

54-3702. Definitions. — As used in this chapter:

- (1) "Association" means the Idaho occupational therapy association.
- (2) "Board" means the occupational therapy licensure board of Idaho as set out in section 54-3717, Idaho Code.
- (3) "Bureau" means the bureau of occupational licenses.
- (4) "Department" means the department of self-governing agencies.
- (5) "Good standing" means the individual's license, certification, or registration is not currently suspended or revoked by any state regulatory entity.
- (6) "Graduate occupational therapist" means a person who holds a

certificate of graduation from an approved occupational therapy curriculum, who has submitted a completed application for certification by examination, and who may practice occupational therapy in association with and under the supervision of an occupational therapist and under authority of a limited permit.

(7) "Graduate occupational therapy assistant" means a person who holds a certificate of graduation from an approved occupational therapy assistant curriculum, who has submitted a completed application for licensure by examination and is performing the duties of occupational therapy assistant in association with and under the supervision of an occupational therapist and under the authority of a limited permit.

(8) "License" means a document issued by the board to a person under this chapter authorizing the person to practice as an occupational therapist or occupational therapy assistant.

(9) "Occupational therapist" means a person licensed to practice occupational therapy.

(10) "Occupational therapy" means the care and services provided by or under the direction and supervision of an occupational therapist.

(11) "Aide in the delivery of occupational therapy services" means a person who is not licensed by the board and who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function only under the guidance, responsibility and line of sight supervision of the licensed occupational therapist or an occupational therapy assistant who is appropriately supervised by an occupational therapist. The aide provides only specifically selected client related or nonclient related tasks for which the aide has been trained and has demonstrated competence.

(12) "Occupational therapy assistant" means a person licensed to practice occupational therapy, and who works under the supervision of an occupational therapist. [()]

(13) "Practice of occupational therapy" means the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for the purpose of promoting health and wellness and to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being and quality of life.

(a) Develop occupation based plans, methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

- (iv) Health promotion and wellness to enable or enhance performance in everyday life activities.
- (v) Prevention of barriers to performance, including disability prevention.
- (b) Evaluation of factors affecting a client's occupational performance areas of activities of daily living (ADL), instrumental activities of daily living (IADL), rest and sleep, education, work, play, leisure, and social participation, including:
 - (i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive), values, beliefs, and spirituality, and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).
 - (ii) Performance patterns, including habits, routines, roles, and behavior patterns.
 - (iii) Contexts and activity demands that affect performance, including cultural, physical, environmental, social, virtual and temporal.
 - (iv) Performance skills, including sensory perceptual skills, motor and praxis skills, emotional regulation skills, cognitive skills, communication and social skills.
- (c) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, rest and sleep, including:
 - (i) Therapeutic use of occupations, exercises, and activities.
 - (ii) Training in self-care, self-management, home management, and community/work reintegration.
 - (iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.
 - (iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.
 - (v) Education and training of individuals, including family members, caregivers, and others.
 - (vi) Care coordination, case management, and transition services.
 - (vii) Consultative services to groups, programs, organizations, or communities.
 - (viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.
 - (ix) Assessment, design, fabrication, application, fitting, and training in assistive technology, adaptive devices, orthotic devices, and prosthetic devices.
 - (x) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management.
 - (xi) Driver rehabilitation and community mobility.
 - (xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.
 - (xiii) Application of superficial, thermal and mechanical physical agent modalities, and use of a range of specific therapeutic procedures (such

as basic wound management; techniques to enhance sensory, perceptual, and cognitive processing; therapeutic exercise techniques to facilitate participation in occupations) to enhance performance skills.

(xiv) Use of specialized knowledge and skills as attained through continuing education and experience for the application of deep thermal and electrotherapeutic modalities, therapeutic procedures specific to occupational therapy and wound care management for treatment to enhance participation in occupations as defined by rules adopted by the board.

(d) Engaging in administration, consultation, testing, education and research as related to paragraphs (a), (b) and (c) of this subsection and further established in rule.

History. § 1, p. 123; am. 1998, ch. 153, § 1, p. 527; am. I.C., § 54-3702, as added by 1987, ch. 69, 2009, ch. 222, § 2, p. 691.

STATUTORY NOTES

Cross References. Bureau of occupational licenses, § 67-2602. Department of self-governing agencies, § 67-2601 et seq.

Amendments. The 2009 amendment, by ch. 222, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes. For more on the Idaho occupational therapy association, see <http://sites.google.com/site/idotassoc/home>.

54-3703. License required. — It shall be unlawful for any person to practice or to offer to practice occupational therapy, or to represent such person to be an occupational therapist or occupational therapy assistant unless such person is licensed under the provisions of this chapter. Only an individual may be licensed under this chapter.

History. I.C., § 54-3703, as added by 1987, ch. 69, § 1, p. 123; am. 2009, ch. 222, § 3, p. 691.

STATUTORY NOTES

Amendments. The 2009 amendment, by ch. 222, twice substituted "chapter" for "act."

54-3704. Exemptions. — Nothing in this chapter shall be construed as preventing or restricting the practice, services or activities or requiring licensure pursuant to this chapter of:

(1) Any person licensed or regulated by the state of Idaho from engaging in the profession or practice for which they are licensed or regulated, including, but not limited to, any athletic trainer, chiropractor, dentist, nurse, physician, podiatrist, physical therapist, optometrist, osteopath, surgeon or any other licensed or regulated practitioner of the healing arts,

nor restrict employees working under the direct supervision of those persons referred to in this subsection (1), so long as such person does not hold himself or herself out as an occupational therapist, occupational therapy assistant or a person engaged in the practice of occupational therapy; or

(2) Any person employed as an occupational therapist or occupational therapy assistant by the government of the United States or any agency thereof, if such person provides occupational therapy solely under the direction or control of the organization by which such person is employed; or

(3) Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy in an accredited or approved educational program, if the person is designated by a title which clearly indicates a student or trainee status; or

(4) Any person fulfilling the supervised fieldwork experience requirements of section 54-3706, Idaho Code, if the experience constitutes a part of the experience necessary to meet the requirement of that section; or

(5) Any person, for purposes of continuing education, consulting, and/or training, who is performing occupational therapy services in this state, for no more than sixty (60) days in a calendar year in association with an occupational therapist licensed under this chapter, if:

(a) The person is licensed as an occupational therapist or occupational therapy assistant in good standing in another state; or

(b) The person is certified as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) by the national board for certification of [in] occupational therapy or a successor organization as established in rule.

History.

I.C., § 54-3704, as added by 1987, ch. 69,
§ 1, p. 123; am. 2009, ch. 222, § 4, p. 691.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, through-out the section, substituted “chapter” for “act”; rewrote subsection (1), which formerly read: “Any person licensed in this state by any other law from engaging in the profession or occupation for which such person is licensed”; and, in subsection (5)(b), substituted “national board for certification of occupational therapy” for “American occupational therapy

association” and added “or a successor organization as established in rule.”

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

The bracketed insertion in paragraph (5)(b) was added by the compiler to correct the name of the referenced organization. See <http://www.nbcot.org>.

54-3705. Limited permit — And temporary license. — (1) A limited permit may be granted to a graduate occupational therapist or a graduate occupational therapy assistant who has completed the education and experience requirements of this chapter for an occupational therapist or an occupational therapy assistant. The permit shall allow a person to practice occupational therapy under supervision as defined in section 54-3715, Idaho Code. This permit shall be valid until the person is issued a license under section 54-3710, Idaho Code, or until the results of the examination taken are available to the board. The board may renew a limited permit once.

(2) A temporary license may be issued by the board to an applicant who is currently licensed and in good standing to practice in another jurisdiction and meets the requirements for licensure by endorsement of the other jurisdiction while the application is being processed by the board.

History.

I.C., § 54-3705, as added by 1987, ch. 69, § 1, p. 123; am. 2009, ch. 222, § 5, p. 691.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, in the section catchline, added “and temporary license”; added the subsection (1) designation, and, in subsection (1), in the first sentence, substituted “graduate occupational therapist or a graduate occupational therapy assistant” for “person” and “chapter” for “act,” and added

“for an occupational therapist or an occupational therapy assistant” at the end and, in the second sentence, substituted “under supervision as defined in section 54-3715, Idaho Code” for “in association with a licensed occupational therapist as established by board rule,” and updated the section reference in the third sentence; and added subsection (2).

54-3706. Requirements for licensure. — A person applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application provided by the board showing to the satisfaction of the board that such person meets the following requirements:

(1) Education: Applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy that is accredited by the American occupational therapy association’s accreditation council for occupational therapy education (ACOTE) or predecessor or a successor organization as established in rule and approved by the licensure board.

(2) Experience: Applicant shall submit to the licensure board evidence of having successfully completed a period of supervised fieldwork experience acceptable to the board, which period of fieldwork experience shall be:

- (a) For an occupational therapist, a minimum of six (6) months of supervised fieldwork experience; or
- (b) For an occupational therapy assistant, a minimum of four (4) months of supervised fieldwork experience.

(3) Examination: An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination as provided for in section 54-3708, Idaho Code.

(4) Is in good standing.

History.

I.C., § 54-3706, as added by 1987, ch. 69, § 1, p. 123; am. 2009, ch. 222, § 6, p. 691.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, in subsection (1), inserted “that is accredited by the American occupational therapy association’s

accreditation council for occupational therapy education (ACOTE) or predecessor or a successor organization as established in rule and”; in subsection (2)(b), substituted “four (4)

months" for "two (2) months"; updated the section reference in subsection (3); and added subsection (4).

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

For more on the accreditation council for occupational therapy education of the American occupational therapy association, see <http://www.aota.org/Educate/Accredit.aspx>.

54-3707. Application for licensure. — Each applicant for licensure shall submit a completed written application to the board, on forms prescribed by the board, together with the application fee. The application shall be verified under oath and shall require the following information:

(1) A certificate of graduation from an approved occupational therapy curriculum, or an approved occupational therapy assistants curriculum accredited by the American occupational therapy association's accreditation council for occupational therapy education, or predecessor or a successor organization as established in rule and approved by the licensure board.

(2) The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses;

(3) The disclosure of any disciplinary action against the applicant by any state professional regulatory agency or professional organization;

(4) A person trained as an occupational therapist outside of the United States and its territories shall satisfy the examination requirements as provided in section 54-3708, Idaho Code. The board shall require such applicants to meet examination eligibility requirements as established by the credentialing body recognized by the board and which are substantially equal to those found in section 54-3708, Idaho Code.

History.

I.C., § 54-3707, as added by 2009, ch. 222, § 7, p. 691.

STATUTORY NOTES

Compiler's Notes.

Former § 54-3707 was redesignated as § 54-3708 by S.L. 2009, ch. 222, § 8.

For more on the accreditation council for

occupational therapy education of the American occupational therapy association, see <http://www.aota.org/Educate/Accredit.aspx>.

54-3708. Examination for licensure of occupational therapists and occupational therapy assistants. — (1) Each applicant for licensure shall be examined by written examination to test the person's knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and such other subjects as the licensure board may require in rule to determine the applicant's fitness to practice. The written examination shall be the examination established and conducted by the national board for certification in occupational therapy and the passing score shall be the passing score established by the national board for certification in occupational therapy or its successor organization as established in rule.

(2) An applicant for licensure by examination who fails to pass the

examination after two (2) attempts must submit a new application as set out in this chapter.

(3) An application upon which the applicant takes no further action will be held for no longer than one (1) year.

History. § 1, p. 123; am. and redesign. 2009, ch. 222, I.C., § 54-3707, as added by 1987, ch. 69, § 8, p. 691.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, redesignated this section from § 54-3707 and, in subsection (1), inserted “in rule” in the first sentence, deleted the former last sentence, which read: “The licensure board shall approve an examination for occupational therapists and an examination for occupational therapy assistant and establish standards for acceptable performance,” and added the last sentence; deleted former subsection (2), regarding examinations given at least twice

yearly; and added present subsections (2) and (3).

Compiler’s Notes.

This section was formerly compiled as § 54-3707.

Former § 54-3708 was redesignated as § 54-3709 by S.L. 2009, ch. 222, § 9.

For more on the national board for certification in occupational therapy, see <http://www.nbcot.org>.

54-3709. Waiver of requirements — License endorsement. —

(1) The licensure board shall grant a license to any person certified prior to the effective date of this chapter and practicing in Idaho as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) by the national board for certification in occupational therapy or a predecessor organization as established in rule. The licensure board may waive the examination, education, or experience requirements and grant a license to any person certified by the national board for certification after the effective date of this chapter if the board determines the requirements for such certification are equivalent to the requirements for licensure in this chapter.

(2) The licensure board may waive the examination, education, or experience requirements and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure pursuant to this chapter.

History. § 1, p. 123; am. and redesign. 2009, ch. 222, I.C., § 54-3708, as added by 1987, ch. 69, § 9, p. 691.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, redesignated this section from § 54-3708 and, throughout the section, substituted “chapter” for “act”; and in subsection (1), in the first sentence, substituted “national board for certification in occupational therapy” for “American occupational therapy association

(AOTA)” and added “or a predecessor organization as established by rule” and, in the last sentence, substituted “national board for certification” for “AOTA.”

Compiler’s Notes.

This section was formerly compiled as § 54-3708.

Former § 54-3709 was redesignated as § 54-3710 by S.L. 2009, ch. 222, § 10.

The phrase “the effective date of this chapter” in subsection (1) refers to the effective date of S.L. 1987, ch. 69, which was July 1, 1987.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

For more on the national board for certification in occupational therapy, see <http://www.nbcot.org>.

54-3710. Issuance of license. — The board shall issue a license to any person who meets the requirements of this chapter upon payment of the prescribed license fees.

History.

I.C., § 54-3709, as added by 1987, ch. 69,

§ 1, p. 123; am. and redesign. 2009, ch. 222, § 10, p. 691.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, redesignated this section from § 54-3709 and, deleted “based upon recommendation of the licensure board” preceding “shall issue” and substituted “chapter” for “act.”

Compiler's Notes.

This section was formerly compiled as § 54-3709.

Former § 54-3710 was redesignated as § 54-3711 by S.L. 2009, ch. 222, § 11.

54-3711. Renewal and reinstatement of license. — (1) Any license issued under this chapter shall be subject to annual renewal and shall expire on the applicant's birthdate unless renewed before the applicant's birthdate in the manner prescribed by the rules of the board. The board shall require biennial proof of completing at least two (2) continuing education units approved by the board. In addition, the board shall require ten (10) hours of professional development units as established in rule.

(2) The board may reinstate a license canceled for failure to renew upon compliance with requirements of the board for renewal of licenses.

(3) Upon application, the board shall grant inactive status to a licensee who (a) does not practice as an occupational therapist or an occupational therapy assistant, or (b) maintains any continuing competency requirements established by the board.

(4) An individual desiring reinstatement to full active licensure to practice as an occupational therapist or occupational therapy assistant shall submit a completed written application to the board according to procedures and requirements as promulgated by rule.

History.

I.C., § 54-3710, as added by 1987, ch. 69,

§ 1, p. 123; am. and redesign. 2009, ch. 222, § 11, p. 691; am. 2012, ch. 67, § 1, p. 190.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, redesignated this section from § 54-3710 and, in the section catchline, inserted “and reinstatement”; in subsection (1), in the first sentence, substituted “chapter” for “act” and inserted “on the applicant's birthdate” and “before the applicant's birthdate,” deleted the former last

sentence, which read: “The board may reinstate a license cancelled for failure to renew upon compliance with requirements of the board for renewal of licenses,” and added the last two sentences; and added subsections (2) and (4), redesignating former subsection (2) as subsection (3).

The 2012 amendment, by ch. 67, deleted

“recommended by the association and” preceding “approved by the board” at the end of the second sentence in subsection (1).

Former § 54-3711 was redesignated as § 54-3712 by S.L. 2009, ch. 222, § 12.

Compiler’s Notes.

This section was formerly compiled as § 54-3710.

54-3712. Fees. — The licensure board shall adopt rules establishing fees for the following:

- (a) Initial license fee;
- (b) Renewal of license fee;
- (c) Inactive license fee;
- (d) Limited permit and temporary license fee; and
- (e) Reinstatement fee.

History.

I.C., § 54-3711, as added by 1987, ch. 69,

§ 1, p. 123; am. and redesign. 2009, ch. 222, § 12, p. 691.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 222, redesignated this section from § 54-3711; in subsection (d), inserted “and temporary license”; and added subsection (e).

Compiler’s Notes.

This section was formerly compiled as § 54-3711.

Former § 54-3712 was redesignated as § 54-3713 by S.L. 2009, ch. 222, § 13.

54-3713. Suspension and revocation of license — Refusal to renew. — (1) Subject to the provisions of chapter 52, title 67, Idaho Code, the board may deny a license or refuse to renew a license, or may suspend or revoke a license or may impose probationary conditions or disciplinary actions set out in section 54-3720, Idaho Code, if the licensee or applicant for license has been found guilty of unprofessional conduct as set forth in section 54-3718, Idaho Code, which has endangered or is likely to endanger the health, welfare, or safety of the public.

(2) A denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license may be ordered by the board after a hearing in the manner provided by chapter 52, title 67, Idaho Code. An application for reinstatement may be made to the board one (1) year from the date of the revocation of a license. The board shall (a) accept or reject an application for reinstatement; and (b) hold a hearing to consider such reinstatement.

(3) A suspended license is subject to expiration and may be renewed as provided in this chapter, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgment by which the license was suspended.

(4) A license revoked on disciplinary grounds is subject to expiration as provided in this chapter, but it may not be renewed. The licensee, as a condition of reinstatement, shall meet license requirements for new licensees and shall pay a reinstatement fee set by the board.

History.

I.C., § 54-3712, as added by 1987, ch. 69,

§ 1, p. 123; am. and redesign. 2009, ch. 222, § 13, p. 691.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 222, redesignated this section from § 54-3712 and, in the introductory paragraph in subsection (1), deleted “upon recommendation of the licensure board” preceding “may deny,” and inserted “or disciplinary actions set out in section 54-3720, Idaho Code” and “as set forth in section 54-3718, Idaho Code,” and deleted the last sentence, which read: “Such unprofessional conduct includes, but is not limited to”; deleted subsections (1)(a) through (1)(e), which were

examples of unprofessional conduct; in the first sentence in subsection (2), substituted “in a manner provided by chapter 52, title 67, Idaho Code” for “in a manner provided by the rules adopted by the board”; and added subsections (3) and (4).

Compiler’s Notes.

This section was formerly compiled as § 54-3712.

Former § 54-3713 was redesignated as § 54-3714 by S.L. 2009, ch. 222, § 14.

54-3714. Licensure board. — (1) The occupational therapy licensure board of Idaho shall consist of five (5) members appointed by the governor, three (3) of whom shall be appointed from recommendations of licensees submitted by the association, except the first licensure board appointments whose members shall be registered occupational therapists (OTR’s) or certified occupational therapy assistants (COTA’s) eligible to become licensed under this chapter, all of whom shall be residents of Idaho at the time of their appointment. If recommendations are not made within sixty (60) days of notification and request, the governor may make appointments of any qualified individual. The persons appointed to the licensure board who are required to be licensed under this chapter shall have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least five (5) years immediately preceding their appointments. At least three (3) licensure board members shall be occupational therapists and one (1) of those members may be an occupational therapy assistant. These members shall at all times be holders of valid licenses for the practice of occupational therapy in Idaho, except for the members of the first board, all of whom shall fulfill the requirements for licensure of this chapter. The remaining members shall be members of health professions or members of the public with an interest in the rights of the consumers of health services.

(2) The governor, within sixty (60) days following the effective date of this chapter, shall appoint two (2) licensure board members for a term of one (1) year; two (2) for a term of two (2) years; and one (1) for a term of three (3) years. Appointments made thereafter shall be for three (3) year terms, but no person shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed in this section.

(3) Within thirty (30) days after the effective date of this chapter, and annually thereafter, the association may submit at least three (3) and not more than five (5) names for each of the five (5) board positions. In the event

of a vacancy in one (1) of the positions the association may recommend, as soon as practical, at least two (2) and not more than three (3) persons to fill that vacancy. The governor shall appoint, as soon as practical, one (1) person, who shall fill the unexpired term. If the association does not provide a recommendation, the governor shall appoint a person to the unexpired term. The governor may remove any licensure board member for misconduct, incompetency, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon.

(4) The licensure board shall within sixty (60) days after the effective date of this chapter, and annually thereafter, hold a meeting and elect a chairman who shall preside at meetings of the licensure board. In the event the chairman is not present at any licensure board meeting, the licensure board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the licensure board shall constitute a quorum. Other meetings may be convened at the call of the chairman or the written request of any two (2) licensure board members.

(5) Each member of the licensure board shall be compensated as provided in section 59-509(n), Idaho Code.

History. § 1, p. 123; am. and redesign. 2009, ch. 222, I.C., § 54-3713, as added by 1987, ch. 69, § 14, p. 691; am. 2010, ch. 106, § 1, p. 216.

STATUTORY NOTES

Amendments. The 2009 amendment, by ch. 222, redesignated this section from § 54-3713 and, rewrote the section, clarifying the name of the board and providing for appointment and removal of board members by the governor. Former § 54-3714 was redesignated as § 54-3717 by S.L. 2009, ch. 222, § 17. The phrase “the effective date of this act” in subsections (2), (3), and (4) refers to the effective date of S.L. 1987, ch. 69, which was July 1, 1987. The abbreviations enclosed in parentheses so appeared in the law as enacted.

Compiler’s Notes. This section was formerly compiled as § 54-3713.

54-3715. Supervision. — Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development. Practices and procedures governing the supervision of occupational therapy assistants, a limited permit holder and an aide in the delivery of occupational therapy services shall be established in rule and be adopted by the board. Practices and procedures shall include, but not be limited to, delivery of occupational therapy services, facilitation of growth and competence, frequency, methods and content of supervision, a plan of supervision and required documentation of compliance with the plan.

History. I.C., § 54-3715, as added by 2009, ch. 222, § 15, p. 691.

STATUTORY NOTES

Compiler's Notes.

Former § 54-3715 was redesignated as
§ 54-3719 by S.L. 2009, ch. 222, § 19.

54-3716. Complaints. — (1) Any person may file a complaint with the board against any licensed occupational therapist or licensed occupational therapy assistant in the state charging that person with having violated the provisions of this chapter.

(2) The complaint shall specify charges in sufficient detail so as to disclose to the accused fully and completely the alleged acts of misconduct for which he or she is charged.

(3) Upon receiving a complaint, the board shall notify the licensee of the complaint and request a written response from the licensee.

(4) The board shall keep an information file about each complaint filed with the board. The information in each complaint file shall contain complete, current and accurate information including, but not limited to:

- (a) All persons contacted in relation to the complaint;
- (b) A summary of findings made at each step of the complaint process;
- (c) An explanation of the legal basis and reason for a complaint that is dismissed; and
- (d) Other relevant information.

History.

I.C., § 54-3716, as added by 2009, ch. 222,
§ 16, p. 691.

STATUTORY NOTES

Compiler's Notes.

Former § 54-3716 was redesignated as
§ 54-3720 by S.L. 2009, ch. 222, § 20.

54-3717. Occupational therapy licensure board of Idaho — Powers and duties. — (1) The licensure board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications, and approve the examinations for licensure under this chapter, and may issue subpoenas, examine witnesses, and administer oaths, and may investigate practices which are alleged to violate the provisions of this chapter.

(2) The licensure board shall adopt rules and regulations, pursuant to chapter 52, title 67, Idaho Code, relating to professional conduct to carry out the policy of this chapter including, but not limited to, regulations relating to professional licensure and to the establishment of ethical standards of practice, disciplinary proceedings, license suspension proceedings, or license revocation proceedings for persons holding a license to practice occupational therapy in this state.

(3) The licensure board shall hold meetings, conduct hearings and keep records and minutes as are necessary to carry out its functions.

(4) Authorize, by written agreement, the bureau of occupational licenses to act as its agents in its interests as set out in the written agreement.

(5) Communicate disciplinary actions to relevant state and federal authorities, the national board for certification in occupational therapy (NBCOT), the American occupational therapy association (AOTA) and to other state occupational licensing authorities.

History.

I.C., § 54-3714, as added by 1987, ch. 69,

§ 1, p. 123; am. and redesign. 2009, ch. 222, § 17, p. 691.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2009 amendment, by ch. 222, redesignated this section from § 54-3717 and, rewrote the section catchline, which formerly read: "Board of medicine and licensure board-powers and duties"; in subsection (1), substituted "chapter" for "act" throughout, and inserted the first occurrence of "licensure," and deleted the last sentence, which read: "The licensure board shall conduct examinations of all applicants for licensure and make recommendations to and consult with the board concerning issuance of licenses, revocation of licenses and rules and regulations to be promulgated under this act"; in subsection (2),

inserted the first occurrence of "licensure," deleted "upon recommendation of the licensure board" preceding "adopt rules," and substituted "chapter" for "act"; and added subsections (4) and (5).

Compiler's Notes.

This section was formerly compiled as § 54-3714.

Former § 54-3717 was redesignated as § 54-3722 by S.L. 2009, ch. 222, § 22.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

For more on the national board for certification in occupational therapy, see <http://www.nbcot.org>.

For more on the American occupational therapy association, see <http://www.aota.org>.

54-3718. Grounds for unprofessional conduct. — The board may take disciplinary action against a licensee for unprofessional conduct including:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) Being guilty of unprofessional conduct as defined by the rules established by the board, or violating the code of ethics adopted and published by the board;

(3) Being convicted of a crime in any court except for minor offenses;

(4) Violating any lawful order, rule or regulation rendered or adopted by the board;

(5) Violating any provision of this chapter or rules promulgated pursuant to this chapter;

(6) Practicing beyond the scope of the practice of occupational therapy;

(7) Providing substandard care as an occupational therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the client is established;

(8) Providing substandard care as an occupational therapy assistant, including exceeding the authority to perform components of intervention selected and delegated by the supervising occupational therapist regardless of whether actual injury to the client is established;

(9) Failing to provide appropriate supervision to an occupational therapy assistant or aide in accordance with this chapter and board rules;

(10) Practicing as an occupational therapist or occupational therapy

assistant when competent services to recipients may not be provided due to the therapist's own physical or mental impairment;

(11) Having an occupational therapist or occupational therapy assistant license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked or suspended by the proper authorities of another state, territory or country, irrespective of intervening appeals and stays;

(12) Engaging in sexual misconduct. For the purposes of this subsection, sexual misconduct includes:

(a) Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while an occupational therapist or occupational therapy assistant/client relationship exists with that person;

(b) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with a client or clients;

(13) Aiding or abetting a person who is not licensed as an occupational therapist or occupational therapy assistant in this state and who directly or indirectly performs activities requiring a license;

(14) Abandoning or neglecting a client or clients under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care.

History.

I.C., § 54-3718, as added by 2009, ch. 222,
§ 18, p. 691.

54-3719. Disposition of receipts — Expenses. — (1) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses account and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account].

History.

I.C., § 54-3715, as added by 1987, ch. 69, § 1, p. 123; am. and redesign. 2009, ch. 222,
§ 19, p. 691; am. 2010, ch. 106, § 2, p. 216.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

the section, revising provisions relating to the disposition of receipts and expenses.

Amendments.

The 2009 amendment, by ch. 222, redesignated this section from § 54-3715 and, rewrote the section, providing for the disposition of receipts and expenses, deleting reference to the director of the Idaho state board of medicine and the state board of medicine account, and setting forth provisions relating to the occupational licenses account.

The 2010 amendment, by ch. 106, rewrote

Compiler's Notes.

This section was formerly compiled as § 54-3715.

Following the 2010 amendment of this section, there is a subsection (1), but no subsection (2).

The bracketed insertion at the end of the section was added by the compiler to affirm that the reference is to the occupational licenses account. See § 67-2605.

54-3720. Penalties and disciplinary actions. — (1) Any person who

violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor.

(2) In addition to the penalties provided for in subsection (1) of this section, the board may impose separately, or in combination, any of the following disciplinary actions on a licensee as provided in this chapter:

- (a) Refuse to issue or renew a license;
- (b) Suspend or revoke a license;
- (c) Impose probationary conditions;
- (d) Issue a letter of reprimand or concern;
- (e) Require restitution of fees;
- (f) Impose a fine as provided for by rule which deprives the licensee of any economic advantage gained by the violation and which reimburses the board for costs of the investigation and proceeding;
- (g) Impose practice and/or supervision requirements;
- (h) Require licensees to participate in continuing competence activities specified by the board;
- (i) Accept a voluntary surrendering of license; or
- (j) Take other appropriate corrective actions, including advising other parties, as needed, to protect their legitimate interests and to protect the public.

(3) If the board imposes suspension or revocation of license, application may be made to the board for reinstatement, subject to the limits of this chapter. The board shall have discretion to accept or reject an application for reinstatement and may require an examination or other satisfactory proof of eligibility for reinstatement.

(4) If a licensee is placed on probation, the board may require the license holder to:

- (a) Report regularly to the board on matters that are the basis of probation;
- (b) Limit practice to the areas prescribed by the board;
- (c) Continue to review continuing competence activities until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation; or
- (d) Provide other relevant information to the board.

(5)(a) The board is empowered to apply for relief by injunction, without bond, to restrain any person, partnership, or corporation from any threatened or actual act or practice, which constitutes an offense under the provisions of this chapter. It shall not be necessary for the board to allege and prove that there is no adequate remedy at law in order to obtain the relief requested. The members of the board shall not be individually liable for applying for such relief.

(b) If a person other than a licensed occupational therapist or occupational therapy assistant threatens to engage in or has engaged in any act or practice which constitutes an offense under the provisions of this chapter, a district court of any county on application of the board may issue an injunction or other appropriate order restraining such conduct.

History.

I.C., § 54-3716, as added by 1987, ch. 69, § 1, p. 123; am. and redesign. 2009, ch. 222, § 20, p. 691.

STATUTORY NOTES**Cross References.**

Penalty for misdemeanor where none prescribed, § 18-113.

tions"; added the subsection (1) designation, and therein substituted "chapter" for "act"; and added subsections (2) through (5).

Amendments.

The 2009 amendment, by ch. 222, redesignated this section from § 54-3716 and, in the section catchline, added "and disciplinary ac-

Compiler's Notes.

This section was formerly compiled as § 54-3716.

54-3721. Occupational therapy licensure fund. [Repealed.]

Repealed by S.L. 2010, ch. 106, § 3, effective July 1, 2010.

History.

I.C., § 54-3721, as added by 2009, ch. 222, § 21, p. 691.

54-3722. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

History.

I.C., § 54-3717, as added by 1987, ch. 69, § 1, p. 123; am. and redesign. 2009, ch. 222, § 22, p. 691.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 222, redesignated this section from § 54-3717 and substituted "chapter" for "act" in three places.

Compiler's Notes.

This section was formerly compiled as § 54-3717.

CHAPTER 38**BOARD OF CEMETERIANS****SECTION.**

- 54-3801. Board of cemeterians.
54-3802. Powers and duties of board.
54-3803. License fees.
54-3804. Denial, suspension, or revocation of licenses — Grounds — Probation.

SECTION.

- 54-3805. Written complaint — Procedure for suspension or revocation of license.

54-3801. Board of cemeterians. — There is hereby established in the department of self-governing agencies a state board of cemeterians to be composed of three (3) members appointed by the governor in the manner hereinafter set forth. Each member of the board shall be a cemeterian and resident of the state of Idaho for a period of at least five (5) years next preceding his appointment, during which time he shall have been continu-

ously engaged in the cemetery business. No person shall be eligible for appointment to the board of cemeterians who is financially interested, directly, or indirectly, in any embalming college, wholesale funeral supply business, or casket manufacturing business.

The governor shall appoint the members of the board from a list of qualified cemeterians of triple the number of persons to be appointed, who shall be proposed and submitted to him by the Idaho cemetery association, inc., or other statewide organization or association of cemeterians whose membership is composed of a majority of all cemeterians of the state.

All members of the board of cemeterians shall be appointed to serve for a term of three (3) years, to expire on May 1 of the year of termination of their term, and until their successors have been appointed and qualified; provided, however, the governor is hereby granted the power to alter the term of office of the members of the board first appointed hereunder so that the term of office of not more than one (1) member of the board shall terminate in any one (1) year. In case of a vacancy occurring on said board of cemeterians by reason of the death of any member, or his resignation, incapacity, neglect or refusal to act, or in any other way, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office from a list of duly qualified cemeterians prepared and submitted in the manner prescribed herein for the initial appointment of members to the board. Any member of the board of cemeterians who willfully fails to properly discharge his duties may be removed by the governor.

The board shall meet, not less than annually, to elect a chairman, vice chairman, and secretary and take official board action on pending matters by majority vote of all the members of the board of cemeterians, and in doing so a majority of the members of said board shall at all times constitute a quorum. Notice of any meeting shall be given by the chairman to all members of the board at least ten (10) days in advance of each meeting unless such notice is waived in writing by all of the members of the board.

Each member of the board of cemeterians shall be compensated as provided by section 59-509(g), Idaho Code.

History.

I.C., § 54-3901, as added by 1989, ch. 138, § 3, p. 311; am. and redesign. 2005, ch. 25, § 100, p. 82.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

Compiler's Notes.

Chapters 138 and 179 of S.L. 1989 each purported to create a new chapter 39 in title

54. Chapter 138 was compiled as §§ [54-3801 to 54-3805] 54-3901 to 54-3905, while chapter 179 was compiled as §§ 54-3901 to 54-3918. The redesignation of the sections enacted by S.L. 1989, ch. 138 was made permanent by S.L. 2005, ch. 25.

54-3802. Powers and duties of board. — The state board of cemeterians shall have the following powers and duties:

(1) To prepare, conduct, and grade examinations of applicants for cemeterian licenses.

(2) To certify the results of examinations of applicants and certify the applicant as having "passed" or "failed."

(3) To conduct hearings and proceedings in connection with the suspension or revocation of licenses.

(4) To make findings and recommendations to the governor on any and all matters relating to the enforcement of the provisions of this act.

(5) To perform all duties and exercise all other powers granted under this act, or the laws of the state of Idaho.

(6) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

History.

I.C., § 54-3902, as added by 1989, ch. 138,

§ 3, p. 311; am. and redesign. 2005, ch. 25, § 101, p. 82.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

(4) and (5), refers to S.L. 1989, ch. 138, which is compiled as §§ 54-1129 to 54-1138 and 54-3801 to 54-3805.

Compiler's Notes.

The term "this act," as used in subsections

54-3803. License fees. — There shall be paid with the filing of any application for an original license, or the application for any renewal of a license, the following license fees:

(1) Twenty-five dollars (\$25.00) for a cemeterian license.

(2) Thirty-five dollars (\$35.00) for a cemetery establishment license.

(3) Fifteen dollars (\$15.00) for a resident trainee license. All licenses shall be issued on a calendar or fiscal year basis, as determined by the board, and there shall be no proration of fees for a part year license.

All fees shall be paid to the bureau of occupational licenses.

History.

I.C., § 54-3903, as added by 1989, ch. 138,

§ 3, p. 311; am. and redesign. 2005, ch. 25, § 102, p. 82.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

54-3804. Denial, suspension, or revocation of licenses — Grounds — Probation. — The board may refuse to issue or may refuse to renew or may suspend or may revoke any license, or may place the holder thereof on a term of probation, after proper hearing, upon finding that the holder of such license committed any of the following acts or omissions:

(1) Conviction of, being found guilty of, pleading guilty to or receiving withheld judgment for a crime involving moral turpitude.

(2) Conviction of, being found guilty of, pleading guilty to or receiving withheld judgment for a felony.

(3) Unprofessional conduct, which is hereby defined to include:

(a) Misrepresentation or fraud in the conduct of cemetery services;

(b) False or misleading advertising as a holder of a license for the

advertising or using the name of an unlicensed person in connection with that of any cemetery establishment;

(c) Employment directly or indirectly, of any resident trainee, agent, assistant, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular cemetery establishment;

(d) Gross immorality;

(e) Aiding or abetting an unlicensed person to engage in practice as a cemeterian;

(f) Violation of any of the provisions of section 54-1116, Idaho Code.

(g) Violation of any state law, or municipal or county ordinance, or regulation authorized under this act affecting the handling, custody, care, processing or transportation of dead human bodies;

(h) Fraud or misrepresentation in obtaining or renewing a license;

(i) Violation of statutes of any state having to do with prearrangement or prefinancing of cemetery supplies or services.

History.

I.C., § 54-3904, as added by 1989, ch. 138, § 3, p. 311; am. and redesisg. 2005, ch. 25, § 103, p. 82.

STATUTORY NOTES

Compiler's Notes.

The term "this act," as used in paragraph (3)(g), refers to S.L. 1989, ch. 138, which is compiled as §§ 54-1129 to 54-1138 and 54-3801 to 54-3805.

54-3805. Written complaint — Procedure for suspension or revocation of license. — Upon a written complaint filed with the board of cemeterians the board shall cause to be held a hearing to determine whether a license of any person issued under this act should be suspended or revoked, or the issuance or renewal thereof refused, because of a violation of any of the causes set forth in section 54-3804, Idaho Code. At least fifteen (15) days prior to the date set for such hearing, the board shall cause written notice to be sent by certified mail to the licensee or applicant at his last known address, which notice shall contain a statement of the charges made, and the date, time and place set for hearing. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the board shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 54-3905, as added by 1989, ch. 138, § 3, p. 311; am. 1993, ch. 216, § 91, p. 587; am. and redesisg. 2005, ch. 25, § 104, p. 82.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 1989, ch. 138 provided: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of remaining portions of this act."

The term "this act" in the first sentence, refers to S.L. 1989, chapter 138, which is codified as §§ 54-1129 to 54-1138 and 54-3801 to 54-3805.

CHAPTER 39

ATHLETIC TRAINERS

SECTION.

- 54-3901. Legislative intent.
- 54-3902. Definitions.
- 54-3903. Scope of practice.
- 54-3904. Licensure required.
- 54-3905. Exceptions to licensure requirement.
- 54-3906. Qualifications for licensure.
- 54-3907. Fees.
- 54-3908. Provisional licensure.
- 54-3909. Issuance of licensure.
- 54-3910. Renewal of licensure.
- 54-3911. Denial — Suspension and revoca-

SECTION.

- tion of license — Refusal to renew.
- 54-3912. Board of athletic trainers — Created — Appointment — Terms.
- 54-3913. Board of medicine and board of athletic trainers — Powers and duties.
- 54-3914. Compensation.
- 54-3915. Board of medicine — Administrative provisions.
- 54-3916. Penalties.
- 54-3917. Severability.

54-3901. Legislative intent. — In order to promote the public health, safety, and welfare, to promote the highest degree of professional conduct on the part of athletic trainers, and to assure the availability of athletic trainer services of high quality to persons in need of such services, it is the purpose of this chapter to provide for the registration of persons offering athletic trainers services to the public.

History.

I.C., § 54-3901, as added by 1989, ch. 179,
§ 1, p. 441.

54-3902. Definitions. — As used in this chapter:

(1) "Athlete" means a person who participates in exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed or stamina and which exercises, sports or games are of the type generally conducted in association with an educational institution or professional, amateur or recreational sports club or organization.

(2) "Athletic injury" means a physical injury, harm, hurt or common condition (such as heat disorders), incurred by an athlete, preventing or limiting participation in athletic activity, sports or recreation, which athletic trainers are educated to evaluate and treat or refer to the directing physician.

(3) "Athletic trainer" means a person who has met the qualifications for licensure as set forth in this chapter, is licensed under this chapter, and carries out the practice of athletic training under the direction of a designated Idaho licensed physician, registered with the board or a designated Idaho licensed chiropractic physician.

(4) "Athletic training" means the application by a licensed athletic trainer of principles and methods of:

- (a) Prevention of athletic injuries;
- (b) Recognition, evaluation and assessment of athletic injuries and conditions;
- (c) Immediate care of athletic injuries including common emergency medical situations;

- (d) Rehabilitation and reconditioning of athletic injuries;
 - (e) Athletic training services administration and organization; and
 - (f) Education of athletes.
- (5) "Board" means the Idaho state board of medicine.
- (6) "Board of athletic trainers" means the Idaho board of athletic trainers established in this chapter.
- (7) "Directing physician" means a designated person duly licensed to practice medicine in Idaho, registered with the board or a designated Idaho licensed chiropractic physician, who is responsible for the athletic training services provided by the athletic trainer and oversees the practice of athletic training of the athletic trainer, as established by board rule. This chapter does not authorize the practice of medicine or any of its branches by a person not so licensed by the board.
- (a) This direction will be provided by verbal order when the directing physician is present and by written order or by athletic training service plans or protocols, as established by board rule, when the directing physician is not present.
- (b) Upon referral from a physician licensed in another state and in good standing, the practice of athletic training or physical rehabilitation and/or reconditioning shall be carried out under the written orders of the referring physician and in collaboration with the directing physician.

History.

I.C., § 54-3902, as added by 1989, ch. 179,
§ 1, p. 441; am. 2003, ch. 261, § 1, p. 686.

STATUTORY NOTES**Cross References.**

State board of medicine, § 54-1805.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

54-3903. Scope of practice. — The scope of practice of athletic trainers under the direction of the designated Idaho licensed physician, registered with the board, or a designated Idaho licensed chiropractic physician, includes:

(1) Prevention of athletic injuries by designing and implementing physical conditioning programs, performing preparticipation screenings, fitting protective equipment, designing and constructing protective products and continuously monitoring changes in the environment.

(2) Recognition and evaluation of athletic injuries by obtaining a history of the injury, individual inspection of the injured body part and associated structures and palpation of bony landmarks and soft tissue structures. Immediate care of athletic injuries may require initiation of cardiopulmonary resuscitation, administration of basic or advanced first aid, removal of athletic equipment, immobilization and transportation of the injured athlete. Concurrent with athletic training service plans or protocols, the athletic trainer will determine if the athlete may return to participation or,

if the injury requires further definitive care, the athletic trainer will refer the injured athlete to the appropriate directing physician.

(3) Rehabilitation and reconditioning of athletic injuries by administering therapeutic exercise and physical modalities including cryotherapy, thermotherapy, and intermittent compression or mechanical devices as directed by established, written athletic training service plans or protocols or upon the order of the directing physician.

(4) Athletic training services administration includes implementing athletic training service plans or protocols, writing organizational policies and procedures, complying with governmental and institutional standards and maintaining records to document services rendered.

(5) Education of athletes to facilitate physical conditioning and reconditioning by designing and implementing appropriate programs to minimize the risk of injury.

(6) The scope of practice excludes any independent practice of athletic training by an athletic trainer. An athlete with an athletic injury not incurred in association with an educational institution, professional, amateur or recreational sports club or organization shall be referred by a directing physician, but only after such directing physician has first evaluated the athlete and referred such athlete to the athletic trainer.

History.

I.C., § 54-3903, as added by 2003, ch. 261,
§ 2, p. 686.

STATUTORY NOTES

Compiler's Notes.

Former § 54-3903 was redesignated as
§ 54-3904.

54-3904. Licensure required. — It shall be unlawful for any person to practice or to offer to practice as an athletic trainer, or to represent such person to be an athletic trainer unless such person is licensed under the provisions of this chapter. Only an individual may be licensed under this chapter. An individual may not use the title “licensed athletic trainer,” “athletic trainer,” or “athletic training,” the abbreviations “AT,” “ATC,” “AT,C,” “ATC/L,” “CAT,” “LAT,” or any other words, abbreviations or insignia to indicate or imply that the individual is an athletic trainer unless the individual is licensed pursuant to this chapter.

History.

I.C., § 54-3903, as added by 1989, ch. 179, § 1, p. 441; am. and redesign. 2003, ch. 261,
§ 3, p. 686.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-
3903.

Former § 54-3904 was amended and redesignated as § 54-3905.

54-3905. Exceptions to licensure requirement. — Nothing in this

chapter shall be construed as preventing or restricting the practice, services or activities or requiring licensure pursuant to this chapter of:

(1) Any person licensed in this state by any other law, from engaging in the profession or occupation for which such person is licensed or registered or otherwise regulated; or

(2) Any person employed as an athletic trainer by the government of the United States or any agency thereof, if such person provides athletic trainer services solely under the direction or control of the government agency by which such person is employed; or

(3) Any person pursuing a supervised course of study leading to a degree, licensure or registration as athletic trainer in an accredited or approved educational program, if the person is designated by a title which clearly indicates a student or trainee status; or

(4) Any person fulfilling supervised fieldwork experience requirements as prescribed by the board; or

(5) For purposes of continuing education, consulting, and/or training, any person performing athletic trainer services in the state, if these services are performed for no more than sixty (60) days in a calendar year in association with an athletic trainer licensed under this chapter, if:

(a) The person is licensed, registered or certified and in good standing as an athletic trainer in another state; or

(b) The person is certified and in good standing as an athletic trainer by the national athletic trainers' association board of certification or by a nationally recognized credentialing agency, accepted by the board.

(6) Nothing herein shall be construed to require registration of elementary or secondary school teachers, coaches or authorized volunteers who do not hold themselves out to the public as athletic trainers.

(7) This act shall not be construed as to require licensure by persons assisting in an emergency or in providing aid or service for which no fee for service is contemplated, charged or received, provided that the person providing the service or assisting in the emergency does not hold himself out as an athletic trainer.

History.

I.C., § 54-3904, as added by 1989, ch. 179, § 1, p. 441; am. and redesign. 2003, ch. 261, § 4, p. 686.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-3904.

Former § 54-3905 was amended and redesignated as § 54-3906.

The term "this act," as used in subsection

(7), was added by S.L. 2003, chapter 261, which is codified as §§ 54-3902 to 54-3917.

The board of certification, referred to in paragraph (5)(b), was incorporated separately from the national athletic trainers' association in 1989. See <http://www.bocatc.org>.

54-3906. Qualifications for licensure. — An applicant for an athletic trainer license must possess the following qualifications:

(1) Have received a bachelor's or advanced degree from an accredited four (4) year college or university and met the minimum athletic training

curriculum requirement established by the board as recommended by the board of athletic trainers and adopted by board rule.

(2) Have successfully completed the certification examination administered by the national athletic trainers' association board of certification or equivalent examination approved or recognized by the board as recommended by the board of athletic trainers.

(3) Be in good standing with and provide documentation of current certification by the national athletic trainers' association or a nationally recognized credentialing agency, adopted by the board as recommended by the board of athletic trainers.

(4) Submit an application to the board of athletic trainers on forms prescribed by the board and pay the licensure fee required under this chapter.

History.

I.C., § 54-3905, as added by 1989, ch. 179, § 1, p. 441; am. and redesign. 2003, ch. 261, § 6, p. 686.

STATUTORY NOTES

Prior Laws.

Former § 54-3906, as added by 1989, ch. 179, § 1, p. 441, was repealed by S.L. 2003, ch. 261, § 5, effective July 1, 2003.

The board of certification, referred to in subsection (2), was incorporated separately from the national athletic trainers' association in 1989. See <http://www.bocatc.org>.

Compiler's Notes.

This section was formerly compiled as § 54-3905.

For more on the national athletic trainers' association, see <http://www.nata.org>.

54-3907. Fees. — The board, upon recommendation of the board of athletic trainers, shall adopt rules establishing fees for the following:

- (1) Initial licensure fee;
- (2) Renewal of licensure fee;
- (3) Provisional licensure fee;
- (4) Inactive licensure fee;

(5) Application and renewal fees. Necessary nonrefundable fees shall be made for the exact amount of the transaction and accompany all applications for initial licensure and renewal.

(6) Extraordinary expenses. In those situations where the processing of an application for initial licensure or renewal requires extraordinary expenses, the board may charge the applicant reasonable fees to cover all or part of the extraordinary expenses.

History.

I.C., § 54-3907, as added by 1989, ch. 179, § 1, p. 441; am. 2003, ch. 261, § 7, p. 686.

54-3908. Provisional licensure. — The board, based upon the recommendation of the board of athletic trainers, may issue provisional licensure to applicants who are actively engaged in preparing themselves to meet the qualifications prescribed in this chapter. A provisional license shall be valid for a term of one (1) year, but may be renewed only twice, at the discretion of the board upon recommendation of the board of athletic trainers.

History. § 1, p. 441; am. and redesign. 2003, ch. 261,
I.C., § 54-3909, as added by 1989, ch. 179, § 8, p. 686.

STATUTORY NOTES

Prior Laws.	Compiler's Notes.
Former § 54-3908, as added by 1989, ch. 179, § 1, p. 441, was repealed by S.L. 2003, ch. 261, § 5, effective July 1, 2003.	This section was formerly compiled as § 54-3909.

54-3909. Issuance of licensure. — (1) The board, based upon recommendation of the board of athletic trainers, shall issue a license to any person who meets the requirements of this chapter upon receipt of an application and payment of the prescribed fees.

(2) The board, upon recommendation of the board of athletic trainers, may refuse to issue or renew the license of an applicant who has been convicted of an offense or disciplined by an athletic trainer licensing body in a manner that bears, in the judgment of the board, a demonstrable relationship to the ability of the applicant to practice athletic training in accordance with the provisions of this chapter, or who has falsified an application for licensure, or refuse any applicant for any cause described under section 54-3911, Idaho Code.

History. § 1, p. 441; am. and redesign. 2003, ch. 261,
I.C., § 54-3910, as added by 1989, ch. 179, § 9, p. 686.

STATUTORY NOTES

Compiler's Notes.	Former § 54-3909 was amended and redesignated as § 54-3908.
This section was formerly compiled as § 54-3910.	

54-3910. Renewal of licensure. — (1) Any licensure issued under this chapter shall be subject to renewal and shall expire unless renewed in the manner prescribed by the rules of the board. The board, upon recommendation of the board of athletic trainers, may reinstate a licensure canceled for failure to renew upon compliance with requirements of the board for renewal of licenses.

(a) A license shall be issued for a period of not less than one (1) year nor more than five (5) years, in conformance with administrative rules adopted by the board. Each license shall set forth its expiration date on the face of the certificate. The failure of any licensee to renew his or her license, as required herein and by the rules of the board, shall not deprive such person of the right to renewal, except as provided for in this chapter.

(b) Fees for renewal of licensure of athletic trainers shall be fixed by the board in its rules.

(c) All licensed athletic trainers must be in good standing with and provide documentation of current certification by the national athletic trainers' association board of certification or a nationally recognized credentialing agency, accepted by the board. All athletic trainers holding current Idaho registration/licensure who are not certified by the national athletic trainers' association board of certification or a nationally recog-

nized credentialing agency, accepted by the board, are required to provide documentation of successful completion of eighty (80) hours of board approved continuing educational units during each three (3) year reporting period on forms provided by the board.

(d) All licensed athletic trainers shall report to the board any name change or changes in business and home addresses thirty (30) days after the change becomes final.

(2) Reinstatement of licensure.

(a) Reinstatement of a license that has lapsed for a period of three (3) consecutive years shall require good standing with and documentation of current certification by the national athletic trainers' association board of certification or a nationally recognized credentialing agency, accepted by the board.

(b) Reinstatement of a license that has lapsed for a period of three (3) consecutive years shall require the payment of a renewal fee and reinstatement fee in accordance with the rules adopted by the board, provided however, that no reinstatement fee shall be greater than fifty dollars (\$50.00).

(c) Reinstatement of a license that has lapsed for a period of more than three (3) consecutive years shall require reapplying for a license and payment of fees in accordance with the rules adopted by the board. The applicant shall successfully demonstrate to the board, upon recommendation of the board of athletic trainers, competency in the practice of athletic training. The board, upon recommendation of the board of athletic trainers, may also require the applicant to take an examination, remedial courses, or both, as shall be recommended by the board of athletic trainers.

(3) Upon application and recommendation by the board of athletic trainers, the board shall grant inactive status to a licensed athletic trainer who:

(a) Does not practice as an athletic trainer; and

(b) Is in good standing with and provides documentation of current certification by the national athletic trainers' association board of certification or a nationally recognized credentialing agency, accepted by the board.

History.

I.C., § 54-3911, as added by 1989, ch. 179,

§ 1, p. 441; am. and redesign. 2003, ch. 261,

§ 10, p. 686.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-3911.

Former § 54-3910 was amended and redesignated as § 54-3909.

The board of certification, referred to in paragraphs (1)(c), (2)(a), and (3)(b), was incorporated separately from the national athletic trainers' association in 1989. See <http://www.bocatc.org>.

54-3911. Denial — Suspension and revocation of license — Refusal to renew. — (1) Subject to the provisions of chapter 52, title 67, Idaho Code, the board, upon recommendation of the board of athletic trainers, may deny license or refuse to renew a license, or may suspend or

revoke a license or may impose probationary conditions if the applicant for licensure has been found guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. All petitions for reconsideration of a denial of a license application or reinstatement application must be made to the board within one (1) year from the date of the denial. Such unprofessional conduct includes, but is not limited to:

- (a) Obtaining licensure by means of fraud, misrepresentation, or concealment of material facts;
- (b) Being guilty of unprofessional conduct, negligence or incompetence in the practice of athletic training as defined by the rules established by the board, or violating the code of ethics adopted and published by the board;
- (c) Being convicted of a felony by a court of competent jurisdiction;
- (d) The unauthorized practice of medicine;
- (e) Use of any advertising statements that deceive or mislead the public or that are untruthful;
- (f) Making statements that the licensee knows, or should have known, are false or misleading regarding skill or efficacy or value of treatment or remedy administered by the licensee in the treatment of any condition pertaining to athletic training;
- (g) Practicing or offering to practice beyond the scope of athletic training as defined in this chapter or which fails to meet the standard of athletic training provided by other qualified athletic trainers in the same or similar community;
- (h) Performance of services while under the influence of alcohol, controlled substances or other skill impairing substances so as to create a risk of harm to a client;
- (i) Commission of any act of sexual contact, misconduct, exploitation or intercourse with a client or former client or related to the licensee's practice of athletic training;
 - 1. Consent of the client shall not be a defense;
 - 2. This paragraph shall not apply to sexual contact between an athletic trainer and the athletic trainer's spouse or a person in a domestic relationship who is also a client;
 - 3. A former client includes a client for whom the athletic trainer has provided athletic training services within the last twelve (12) months;
 - 4. Sexual or romantic relationship with a former client beyond the period of time set forth herein may also be a violation if the athletic trainer uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the client;
- (j) Having been judged mentally incompetent by a court of competent jurisdiction;
- (k) Aiding or abetting a person not licensed in this state who directly or indirectly performs activities requiring a license;
- (l) Failing to report to the board any act or omission of a licensee, applicant, or any other person, which violates any provision of this chapter;
- (m) Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any

client or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action;

(n) Failing to maintain client confidentiality unless otherwise required by law;

(o) Failing to maintain adequate records. For purposes of this paragraph, "adequate records" means legible records that contain, at a minimum, the athletic training service plan or protocol, written orders, an evaluation of objective findings, the plan of care and the treatment records;

(p) Promoting unnecessary devices, treatment, intervention or service for the financial gain of the practitioner or of a third party;

(q) Violating any provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter.

(2) A denial of an application for licensure or application for reinstatement shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and be subject to the provisions of that chapter, as well as the rules adopted by the board governing contested cases.

(3) Any person who shall be aggrieved by any action of the board in denying, refusing to renew, suspending or revoking a licensure, issuing a censure, imposing any restriction upon a licensee, or imposing any fine, may seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 54-3912, as added by 1989, ch. 179,

§ 1, p. 441; am. and redesisg. 2003, ch. 261,

§ 11, p. 686.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-3912.

Former § 54-3911 was amended and redesisg-

inated as § 54-3910.

54-3912. Board of athletic trainers — Created — Appointment — Terms. — (1) A board of athletic trainers is hereby created and made a part of the Idaho state board of medicine.

(2) The board of athletic trainers shall consist of four (4) members, three (3) of whom shall be Idaho licensed athletic trainers actively engaged in the practice of athletic training in this state and one (1) of whom shall be a lay person.

(3) The board shall appoint the members of the board of athletic trainers. In making appointments to the board of athletic trainers, the board shall give consideration to recommendations made by professional organizations of athletic trainers and physicians.

(4) All members of the board of athletic trainers shall have been residents of the state of Idaho for one (1) year immediately preceding appointment. In appointing the athletic trainer members of the first board of athletic trainers, the board may appoint any practicing athletic trainer who possesses the qualifications required by section 54-3906, Idaho Code. All members must be persons of integrity and good reputation. The lay member must be a person who has never been authorized to practice a healing art, and who has never had a substantial personal, business, professional or

pecuniary connection with a healing art or with a medical education or health care facility, except as a client or potential client.

(5) The board of athletic trainers shall be appointed within thirty (30) days after the effective date of this chapter for terms ending December 31. Of the first members of the board of athletic trainers appointed, one (1) member's term shall expire December 31, 1990; one (1) member's term shall expire December 31, 1991; one (1) member's term shall expire December 31, 1992; and one (1) member's term shall expire December 31, 1993. After the initial appointments, all terms shall be four (4) years, and a member may be reappointed. In the event of death, resignation or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment. The board may remove any member for cause at any time prior to the expiration of his term.

(6) The board of athletic trainers shall hold at least one (1) meeting each year. At the meeting, the board of athletic trainers shall elect from among its members for a term of one (1) year commencing on July 1 next, a chairperson. The board of athletic trainers may hold additional meetings on the call of the chairperson or at the written request of any two (2) members of the board of athletic trainers. The board of athletic trainers may appoint committees as it considers necessary to carry out its duties. The quorum required for any meeting of the board of athletic trainers is three (3) members. No action by the board of athletic trainers or its members has any effect unless a quorum of the board of athletic trainers is present.

History.

I.C., § 54-3913, as added by 1989, ch. 179, § 1, p. 441; am. and redesign. 2003, ch. 261, § 12, p. 686.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Former § 54-3912 was amended and redesignated as § 54-3911.

Compiler's Notes.

This section was formerly compiled as § 54-3913.

The phrase "effective date of this chapter" in subsection (5) was added by S.L. 1989, chapter 179, which was effective July 1, 1989.

54-3913. Board of medicine and board of athletic trainers — Powers and duties. — (1) The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications and fitness of applicants, and approve the applications for licensure under this chapter, and may issue subpoenas, examine witnesses, and administer oaths, and may investigate practices which are alleged to violate the provisions of this chapter. The board of athletic trainers shall evaluate all applicants for qualification and fitness for licensure and make recommendations to and consult with the board concerning issuance of licenses, revocation of licenses and rules to be promulgated under this chapter.

(2) The board shall, upon recommendation of the board of athletic trainers, adopt rules pursuant to chapter 52, title 67, Idaho Code, relating to professional conduct to carry out the policy of this chapter including, but not limited to, rules relating to professional licensure and to the establish-

ment of ethical standards of practice, disciplinary proceedings, refusal to renew license proceedings, license suspension proceedings, or license revocation proceedings for persons licensed to practice as an athletic trainer in this state.

(3) The board of athletic trainers shall hold meetings, conduct hearings and keep records and minutes as are necessary to carry out its functions.

(4) Every person licensed as an athletic trainer in Idaho shall be subject to discipline pursuant to the powers set forth in this chapter and the rules of the board of medicine promulgated pursuant thereto. The board of athletic trainers shall have no authority to impose sanctions or limitations or conditions on licenses issued under this chapter and shall be authorized only to make recommendations to the board with respect thereto. Members of the board of athletic trainers shall disqualify themselves and, on motion of any interested party, may on proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias which interferes with their fair and impartial service.

(5) In addition to its other powers, the board of athletic trainers shall be empowered and authorized:

(a) To recommend that the board reprimand by informal admonition any licensed athletic trainer respecting any matter it finds is minor misconduct. Such reprimand shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(b) To recommend that the board order, for good cause, nondisciplinary suspension or transfer to inactive status of any licensed athletic trainer incapacitated by illness, senility, disability, or addiction to drugs, intoxicants or other chemical or like substances, and to provide terms and conditions therefor, including provisions and conditions controlling reinstatement and any request therefor; provided, this paragraph shall not be construed to amend or repeal specific legislation expressly dealing with disabled athletic trainers whether heretofore or hereafter enacted by the legislature of the state of Idaho, but rather shall be construed as complementary thereto.

(c) To recommend that the board accept the resignation and surrender of the license of any athletic trainer under investigation or prosecution who tenders the same, and to impose terms and conditions in connection therewith as it may deem appropriate in the best interests of the public and of justice.

(d) To recommend that the board provide by order for reciprocal discipline in cases involving a licensed athletic trainer or applicant disciplined in any other jurisdiction, provided that such licensee or applicant shall be entitled to appear and show cause why such order should not apply in his or her case.

(e) To recommend that the board provide for reasonable fees through rules for administrative costs and assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee or applicant has been found to be in violation of this chapter.

History.

I.C., § 54-3914, as added by 1989, ch. 179, § 1, p. 441; am. 2000, ch. 332, § 4, p. 1112; am. and redesisg. 2003, ch. 261, § 13, p. 686.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 54-3914. Former § 54-3913 was amended and redesignated as § 54-3912.

54-3914. Compensation. — The members of the board of athletic trainers shall be compensated as provided in section 59-509(k), Idaho Code.

History.

I.C., § 54-3915, as added by 1989, ch. 179, § 1, p. 441; am. and redesisg. 2003, ch. 261, § 14, p. 686; am. 2012, ch. 92, § 1, p. 254.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 92, substituted "section 59-509(k)" for "section 59-509(e)." Former § 54-3914 was amended and redesignated as § 54-3913.

Compiler's Notes.

This section was formerly compiled as § 54-3915.

54-3915. Board of medicine — Administrative provisions. — (1) The executive director of the Idaho state board of medicine shall serve as the executive director to the board of athletic trainers.

(2) All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the state board of medicine account [fund] created by section 54-1809, Idaho Code, and all costs and expenses incurred by the board and the board of athletic trainers under the provisions of this chapter shall be a charge against and paid from said account [fund] for such purposes, and the moneys collected hereunder shall be immediately available for the administration of this chapter. In no instance shall the state board of medicine account [fund] be obligated to pay any claims which in aggregate with claims already allowed exceed the income to the state board of medicine account [fund] which has been derived from the application of this chapter.

Money paid into the state board of medicine account [fund] pursuant to this chapter is hereby continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and the board of athletic trainers in carrying out and enforcing the provisions of this chapter.

History.

I.C., § 54-3916, as added by 1989, ch. 179, § 1, p. 441; am. and redesisg. 2003, ch. 261, § 15, p. 686.

STATUTORY NOTES**Cross References.**

Executive director of Idaho state board of medicine, § 54-1806.

Compiler's Notes.

This section was formerly compiled as § 54-3916.

Former § 54-3915 was amended and redesignated as § 54-3914.

The bracketed insertions throughout the

section were added by the compiler to correct the name of the referenced fund.

54-3916. Penalties. — Any person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor.

History.

I.C., § 54-3917, as added by 1989, ch. 179,

§ 1, p. 441; am. and redesign. 2003, ch. 261, § 16, p. 686.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none prescribed, § 18-113.

Former § 54-3916 was amended and redesignated as § 54-3915.

Compiler's Notes.

This section was formerly compiled as § 54-3917.

54-3917. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

History.

I.C., § 54-3918, as added by 1989, ch. 179, § 1, p. 441; am. 2003, ch. 261, § 17, p. 686.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 54-3918.

Former § 54-3917 was amended and redesignated as § 54-3916.

The term "this act" refers to S.L. 1989, ch. 179, which is compiled as §§ 54-3901 to 54-3917.

CHAPTER 40

MASSAGE THERAPISTS

SECTION.

54-4001. Purpose.

54-4002. Definitions.

54-4003. Exemptions.

54-4004. Prohibitions.

54-4005. License required. [Effective July 1, 2013.]

54-4006. Board of massage therapy.

54-4007. Powers and duties of the board.

54-4008. Fees.

54-4009. Requirements for issuance of license.

SECTION.

54-4010. Endorsement licensure.

54-4011. Licensure renewal.

54-4012. Licensing of existing massage practitioners.

54-4013. Disciplinary action.

54-4014. Enforcement — Penalties.

54-4015. Preemption of local regulation. [Effective July 1, 2013.]

54-4001. Purpose. — By the adoption of this chapter, it is the intent of the legislature to protect the public health, safety and welfare, and to

provide for state administrative supervision, licensure, regulation and disciplinary procedures of every person providing massage therapy who meets and maintains the standards of practice and code of ethics as adopted by the board and is licensed under the provisions of this chapter, unless otherwise exempted herein.

History.

I.C., § 54-4001, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 2012, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4002. Definitions. — As used in this chapter, the following terms have the following meanings:

(1) “Advertise” means, but is not limited to, the issuing or causing to be distributed of any card, sign, direct mail piece or other device or causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine or directory, or announcement on radio or announcement or display on television, computer network or electronic or telephonic medium.

(2) “Board” means the Idaho state board of massage therapy created pursuant to section 54-4006, Idaho Code.

(3) “Compensation” means the payment, loan, advance, donation, contribution, deposit or gift of money or anything of value.

(4) “Massage school” means a massage therapy educational program that is registered by the state board of education in accordance with chapter 24, title 33, Idaho Code, or comparable authority in another state.

(5) “Massage therapist” means a person who is licensed under this chapter and who engages in the practice of massage therapy.

(6) “Massage therapy” means the care and services provided by a massage therapist.

(7) “Practice of massage therapy” means the application of a system of structured touch, pressure, movement and holding of the soft tissues of the human body. The application may include:

- (a) Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement;
- (b) Complementary methods, including the external application of water, heat, cold, lubricants and other topical preparations; or
- (c) The use of mechanical devices that mimic or enhance actions that may be done by the hands.

History.

I.C., § 54-4002, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4003. Exemptions. — (1) Nothing in this chapter shall be construed to restrict any person licensed or regulated by the state of Idaho from engaging in the profession or practice for which they are licensed or regulated.

(2) Nothing in this chapter shall prohibit:

(a) The practice of massage therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(b) The practice of massage therapy by persons duly licensed, registered or certified in another state, territory, the District of Columbia or a foreign country when incidentally called into this state to teach a course related to massage therapy or to consult with a person licensed under this chapter.

(c) Students enrolled in a board-approved course of instruction while completing a clinical requirement or supervised massage therapy fieldwork experience for graduation performed under the supervision of a person licensed under this chapter, provided the student does not hold himself or herself out as a licensed massage therapist and does not receive compensation for services performed.

(d) Nothing in this chapter shall be construed to prevent or restrict the practice of any person in this state who uses touch, words and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged within the scope of practice of a profession, provided that their services are not designated or implied to be massage or massage therapy. Such practices include, but are not limited to, the Feldenkrais method® of somatic education, the Trager approach® to movement education, body-mind centering®, Ortho-Bionomy® and craniosacral therapy.

(e) Persons who restrict their practice to manipulation of the soft tissues of the human body to the hands, feet or ears and do not hold themselves out to be massage therapists or to do massage or massage therapy.

(f) Nothing in this chapter shall be construed to prevent or restrict the practice of any person in this state who uses touch to affect the energy systems, acupoints or qi meridians, channels of energy, of the human body while engaged within the scope of practice of a profession, provided that their services are not designated or implied to be massage or massage therapy. Such practices include, but are not limited to, polarity, polarity therapy, polarity bodywork therapy, Asian bodywork therapy, acupressure, jin shin do®, qi gong, reiki and shiatsu.

(g) Persons engaged in the profession of structural integration, restoring postural balance and functional ease by integrating the body in gravity based on a system of fascial manipulation, awareness, and education

developed by Dr. Ida P. Rolf, provided their services are not designated or implied to be massage or massage therapy. Such practices include, but are not limited to: Rolwing® structural integration, the guild for structural integration, Hellerwork®.

History.

I.C., § 54-4003, as added by 2012, ch. 261, § 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided: “This act shall be in full force and effect on and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4004. Prohibitions. — Massage therapists shall not perform any of the following:

- (1) Diagnosis of injury, illness or disease;
- (2) Chiropractic adjustment or skeletal manipulative procedures or any other procedures as defined in section 54-704, Idaho Code, except as allowed in section 54-4002(7), Idaho Code;
- (3) Therapeutic exercise, medical or other therapeutic modalities including, but not limited to, the use of medically classified therapeutic devices, mechanical traction, laser and light therapies, electrical stimulation or application of ultrasound; and
- (4) Dispensation of, application of or issuance of prescriptions for pharmaceutical agents.

History.

I.C., § 54-4004, as added by 2012, ch. 261, § 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided: “This act shall be in full force and effect on and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4005. License required. [Effective July 1, 2013.] — (1) A person shall not practice massage therapy for compensation or hold himself or herself out to others as a massage therapist without first receiving from the board a license to engage in that practice.

(2) A person holds himself or herself out to others as a massage therapist when the person adopts or uses any title or description including “massage therapist,” “massagist,” “massotherapist,” “myotherapist,” “body therapist,” “massage technician,” “massage practitioner” or any derivation of those terms that implies this practice.

(3) It shall be unlawful for any person who is not a licensed massage therapist under this chapter to advertise using the term “massage therapist.” Any person who holds a license to practice as a massage therapist in this state may use the title “licensed massage therapist.” No other person shall assume this title or use an abbreviation or any other words, letters,

signs or figures to indicate that the person using the title is a licensed massage therapist.

History.

I.C., § 54-4005, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4006. Board of massage therapy. — (1) There is hereby established in the department of self-governing agencies, bureau of occupational licenses, the board of massage therapy. The members thereof shall be appointed by the governor and serve at the pleasure of the governor.

(2) The board shall consist of five (5) members, four (4) of whom shall be licensed pursuant to this chapter and one (1) of whom shall be a member of the public with an interest in the rights of the consumers of massage therapy services. At no time shall more than one (1) board member be an owner of, an instructor of, or otherwise affiliated with a board-approved course of instruction or any other massage therapy school or course of instruction.

(3) Professional massage therapy associations and/or any resident of the state of Idaho may provide nominations to the governor.

(4) All members of the board shall be residents of the state of Idaho for the duration of their appointment and shall have been residents of the state of Idaho for a minimum of three (3) years immediately preceding appointment.

(5) The initial four (4) massage therapist members of the board shall be persons with at least three (3) years of experience in the practice of massage therapy who become licensed pursuant to this chapter.

(6) The initial board shall be appointed for staggered terms, the longest of which shall not exceed three (3) years. After the initial appointments, all terms shall be for three (3) years, and a member may be reappointed for a second term. No member shall serve more than two (2) terms. In the event of death, resignation or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(7) The board, within thirty (30) days after its initial appointment and at least annually thereafter, shall hold a meeting and elect a chairman. The board may hold additional meetings on the call of the chairman or at the written request of any three (3) members of the board. The board may appoint such committees as it considers necessary to carry out its duties. A majority of the members of the board shall constitute a quorum.

(8) Each member of the board shall be compensated as provided in section 59-509(n), Idaho Code.

History.

I.C., § 54-4006, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4007. Powers and duties of the board. — The board shall have the authority to:

(1) Determine the qualifications of persons applying for licensure pursuant to this chapter and define, by rule, the appropriate scope of massage therapy in this state, provided however, that the scope of practice may not exceed that defined in section 54-4002(7), Idaho Code;

(2) Authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest;

(3) Promulgate such rules as are necessary for the administration of this chapter, including standards of professional conduct;

(4) Conduct investigations and hold hearings and compel the attendance of witnesses and the production of papers at such investigations or hearings;

(5) Collect fees and other funds as prescribed by this chapter;

(6) Contract and pursue other matters lawful in this state relating to massage therapy;

(7) Provide such other services and perform such other functions as are necessary and desirable to fulfill its purposes;

(8) Establish requirements for renewal of license and approval of continuing education courses as set forth in section 67-2614, Idaho Code; and

(9) Establish rules for the approval of massage therapy entry-level educational standards but must remain consistent with curriculum requirements in this chapter, or rules promulgated pursuant thereto.

The registration of massage schools shall remain with the state board of education in accordance with chapter 24, title 33, Idaho Code.

History.

I.C., § 54-4007, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4008. Fees. — (1) All fees received under the provisions of this chapter shall be paid to the department of self-governing agencies, bureau of occupational licenses, and deposited in the state treasury to the credit of the occupational licenses fund. All costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund. In no case shall any salary, expense or other obligation of the board be charged against the general fund.

(2) The board, by rule, may impose fees not to exceed two hundred dollars (\$200) annually per fee to provide for the administration of this section including, but not limited to, the following:

- (a) Original license fee;
- (b) Application fee;
- (c) License renewal fee;
- (d) License by endorsement;
- (e) Duplicate license; and
- (f) Reinstatement fee.

History.

I.C., § 54-4008, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4009. Requirements for issuance of license. — Upon application to the board and the payment of the required fees, an applicant may be licensed as a massage therapist if the applicant meets all the requirements of this chapter and provides documentation acceptable to the board that he or she:

- (1) Has obtained a high school diploma or equivalent;
- (2) Is eighteen (18) years of age or older;
- (3) Is of good moral character;
- (4) Has successfully completed a massage program registered pursuant to chapter 24, title 33, Idaho Code, or a comparable authority in another state that consists of the minimum of five hundred (500) in-class supervised hours of coursework and clinic work; and
- (5) Has successfully passed a nationally recognized competency examination in massage therapy that is approved by the board. The passage of this exam may have occurred prior to the effective date of this chapter.

History.

I.C., § 54-4009, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4010. Endorsement licensure. — The board may grant a license without examination to any person who, at the time of application, is licensed or certified in good standing by a board of massage therapy of another state, provided the requirements for such certification or licensure are substantially equivalent to the requirements of this chapter, and upon payment of a fee to be determined by the board.

History.

I.C., § 54-4010, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4011. Licensure renewal. — [(1)] A license shall be issued and renewed in accordance with section 67-2614, Idaho Code.

History.

I.C., § 54-4011, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES**Compiler's Notes.**

The brackets in this section indicate surplusage, as this section was enacted with a subsection (1), but no subsection (2).

“This act shall be in full force and effect on and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided:

54-4012. Licensing of existing massage practitioners. — Until July 1, 2014, the board may issue a license to any individual who meets one (1) of the following requirements:

(1) He or she has completed a minimum of five hundred (500) hours of supervised classroom and hands-on instruction relating to massage therapy;

(2) He or she has completed at least three hundred (300) hours of formal training in massage therapy as determined by the board and has practiced massage therapy for at least five (5) hours per week on average for at least three (3) years prior to the date of application;

(3) He or she has completed at least two hundred (200) hours of formal training in massage therapy as determined by the board and has practiced massage therapy for at least five (5) hours per week on average for at least five (5) years prior to the date of application;

(4) He or she has been an active member in good standing as a massage therapist for a period of at least twelve (12) months of a national professional massage association/organization that offers professional liability insurance; or

(5) He or she has successfully passed an examination meeting the requirements of section 54-4009(5), Idaho Code. The passage of this examination may have occurred before the effective date of this section.

History.

I.C., § 54-4012, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4013. Disciplinary action. — The board may refuse to issue or renew or otherwise discipline a license holder for any of the following:

- (1) The employment of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license;
- (2) Practicing as a massage therapist when physical or mental abilities are impaired as determined by the board;
- (3) Conviction of a felony, a crime involving moral turpitude or a crime under any municipal, state or federal narcotic or controlled substance law, provided that the board has taken into consideration the rehabilitation of the applicant or licensee and other mitigating circumstances;
- (4) Having been adjudged mentally incompetent by a court of competent jurisdiction;
- (5) Engaging in any act or practice in violation of any of the provisions of this chapter or any of the rules adopted by the board, or aiding, abetting or assisting any other person in such a violation;
- (6) The commission of an act of gross negligence or incompetence;
- (7) Practice without a valid license;
- (8) Engaging in any lewd, indecent, obscene or unlawful behavior with a client;
- (9) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals or other business professionals;
- (10) Having had a license revoked or suspended, other disciplinary action taken or an application for licensure refused, revoked or suspended by the proper authorities of another state, territory or country, or omitting such information from any application to the board, or failing to divulge such information when requested by the board;
- (11) A violation of the code of ethics or standards of practice as adopted by the board; and
- (12) Failure to comply with an order issued by the board.

History.

I.C., § 54-4013, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided:
“This act shall be in full force and effect on

and after July 1, 1212, except that the provisions of Sections 54-4005 and 54-4015, Idaho Code, shall not take effect until July 1, 2013.”

54-4014. Enforcement — Penalties. — A person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor. The board may seek an injunction against any person who practices massage therapy in violation of the provisions of this chapter.

History.

I.C., § 54-4014, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided: and after July 1, 1212, except that the provi-
sions of Sections 54-4005 and 54-4015, Idaho
“This act shall be in full force and effect on Code, shall not take effect until July 1, 2013.”

54-4015. Preemption of local regulation. [Effective July 1, 2013.]
— Beginning on the date applications for licensure become available pursuant to this chapter, a local unit of government shall not establish or maintain professional licensing requirements for a massage therapist licensed pursuant to this chapter.

History.

I.C., § 54-4015, as added by 2012, ch. 261,
§ 1, p. 723.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2012, ch. 261 provided: and after July 1, 1212, except that the provi-
sions of Sections 54-4005 and 54-4015, Idaho
“This act shall be in full force and effect on Code, shall not take effect until July 1, 2013.”

CHAPTER 41

IDAHO REAL ESTATE APPRAISERS ACT

SECTION.

- 54-4101. Short title.
- 54-4102. Legislative intent.
- 54-4103. Use of term “licensed” or “certified” appraiser — Unlawful practice of appraisal.
- 54-4104. Definitions.
- 54-4105. Exceptions.
- 54-4106. Real estate appraisers — Real estate appraiser board — Powers and duties — Compensation.
- 54-4107. Disciplinary proceedings.
- 54-4108. Hearing.
- 54-4109. Retention of records.
- 54-4110. Qualifications for licensure or certification — Examinations.

SECTION.

- 54-4111. Use of designation — Corporation, partnerships.
- 54-4112. Regular examinations.
- 54-4113. Fees — Issuance of licenses or certificates.
- 54-4114. Term of license or certificate — Renewal and reinstatement.
- 54-4115. Nonresident licensure or certification and temporary practice.
- 54-4116. Renewal licenses or certificates.
- 54-4117. Injunctive relief.
- 54-4118. Proof of complaint — Prosecution by county attorney.
- 54-4119. Penalty for violation.

54-4101. Short title. — This chapter shall be known and may be cited as the “Idaho Real Estate Appraisers Act.”

History.

I.C., § 54-4101, as added by 1990, ch. 82,
§ 1, p. 164; am. 1992, ch. 92, § 1, p. 282.

JUDICIAL DECISIONS

Cited in: Boel v. Stewart Title Guar. Co.,
137 Idaho 9, 43 P.3d 768 (2002).

54-4102. Legislative intent. — In order to safeguard life, health and property and to promote the public welfare, any person holding himself out to be a state licensed or certified real estate appraiser, as herein defined, in the state of Idaho shall submit evidence of his qualifications so to practice and be licensed or certified as hereinafter provided. Except as herein otherwise expressly provided, no license or certificate shall be issued until an applicant has successfully passed an examination conducted by the real estate appraiser board.

History.

I.C., § 54-4102, as added by 1990, ch. 82,
§ 1, p. 164; am. 1992, ch. 92, § 2, p. 282.

54-4103. Use of term “licensed” or “certified” appraiser — Unlawful practice of appraisal. — It shall be unlawful for any person in this state to assume or use the title “state licensed” or “state certified real estate appraiser” or any title, designation or abbreviation likely to create the impression of licensure or certification by the state of Idaho for any real estate appraisal, unless the person has first been licensed or certified by the real estate appraiser board under the provisions of this chapter. The board may adopt for the exclusive use of persons licensed or certified under the provisions of this chapter, a seal, symbol or other mark identifying the user as a state licensed or certified real estate appraiser.

It shall be unlawful for any person to appraise, practice appraisal, assume to act as, or hold themselves out to the public as an appraiser, or carry on the calling of an appraiser within the state, or to perform an appraisal of real estate located in this state unless the person has first been licensed or certified by the board under the provisions of this chapter.

History.

I.C., § 54-4103, as added by 1990, ch. 82, § 1, p. 164; am. 1992, ch. 92, § 3, p. 282; am. 1999, ch. 54, § 1, p. 136.

54-4104. Definitions. — As used in this chapter:

(1) “Appraisal” or “real estate appraisal” means an analysis, opinion or conclusion relating to the value, nature, quality, or utility of specified interests in, or aspects of, identified real estate.

(2) “Appraisal assignment” means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased opinion or conclusion relating to the value, nature, quality or utility of specified interests in, or aspects of, identified real estate.

(3) “Appraisal foundation” or “foundation” means the appraisal foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(4) “Board” means the real estate appraiser board.

(5) “Broker’s price opinion” means a written price opinion of the estimated price for identified real property that is prepared by a real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, pursuant to the requirements and content provisions for the broker’s price opinions contained in this chapter.

(6) “Federally related transaction” means any real estate related financial transaction that a federally regulated institution, regulatory agency, or the resolution trust corporation engages in, funds, contracts for, or regulates.

(7) “License” or “certificate” means that document issued by the real estate appraiser board certifying that the person named thereon has satisfied the requirements for licensure or certification as a state licensed or certified real estate appraiser and bearing a license or certificate number assigned by the board.

(8) “Noncomplex appraisal” is one in which the subject property has an active market of essentially identical properties, there is adequate market data available, adjustments do not exceed the typical range found in the market for essentially identical properties, and in the instance of residential property, the contract sales price would fall within the market norm for homes or lots within the same area.

(9) “Real estate appraiser” or “appraiser” means a person who for a fee or other valuable consideration or the expectation thereof, develops and communicates real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein.

(10) “Real estate related financial transaction” means any transaction involving:

(a) The sale, lease, purchase, investment in or exchange of real property, including interest in property or the financing thereof;

(b) The financing or refinancing of real property, or any interest in real property;

(c) The use of real property or an interest in real property as security for a loan or investment, including a mortgage backed security.

(11) “Real property” or “real estate” means and includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold and whether situated in this state or elsewhere.

(12) “State certified general real estate appraiser” means a person who is certified to appraise all types of real property.

(13) “State certified residential real estate appraiser” means a person who holds a current, valid certificate as a state certified residential appraiser issued under the provisions of this chapter whose practice is limited to appraisal of residential properties of four (4) or less units without regard to transaction value or complexity.

(14) “State licensed residential real estate appraiser” means a person who is licensed to appraise residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000).

History.

I.C., § 54-4104, as added by 1990, ch. 82,

§ 1, p. 164; am. 1992, ch. 92, § 4, p. 282; am. 1999, ch. 54, § 2, p. 136.

STATUTORY NOTES**Federal References.**

The resolution trust corporation, referred to in subsection (6), was established in 1989. In 1995, its duties were transferred to the savings association insurance fund. In 2006, the savings association insurance fund and the bank insurance fund were combined to form

the deposit insurance fund. See Public Law 109-171.

Compiler's Notes.

For the appraisal foundation, referred to in subsection (3), see <http://www.appraisal.foundation.org>.

54-4105. Exceptions. — (1) The provisions of this chapter do not restrict the right to use the term “appraiser,” provided that such term is not used in a manner that creates the impression of certification by the state of Idaho to perform real estate appraisals other than ad valorem tax appraisals. However, nothing in this chapter shall entitle a state licensed or state certified real estate appraiser to appraise real estate for ad valorem tax purposes unless he has first been certified by the Idaho state tax commission pursuant to section 63-105A(17), Idaho Code.

(2) The provisions of this chapter shall not apply to a licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser.

(3) The provisions of this chapter shall not prohibit a real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, whose license is active and in good standing, from rendering a broker's price opinion, for which the broker may charge a fee, provided the broker's price opinion complies with the following requirements:

(a) The broker's price opinion shall be in writing and contain the following:

- (i) A statement of the intended purpose of the price opinion;
- (ii) A brief description of the subject property and property interest to be priced;
- (iii) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;
- (iv) Any assumptions or limiting conditions;
- (v) A disclosure of any existing or contemplated interest of the broker(s) issuing the opinion;
- (vi) The name and signature of the broker(s) issuing the price opinion and the date of its issuance;
- (vii) A disclaimer that, unless the broker is licensed under the Idaho real estate appraisers act, chapter 41, title 54, Idaho Code, the report is not intended to meet the uniform standards of professional appraisal practice;
- (viii) A disclaimer that the broker's price opinion is not intended to be an appraisal of the market value of the property, and that if an

appraisal is desired, the services of a licensed or certified appraiser should be obtained.

The broker's price opinion permitted under this chapter may not be used as an appraisal, or in lieu of an appraisal, in a federally related transaction.

(4) Any person who is not licensed or certified under the provisions of this chapter may assist a state licensed or certified real estate appraiser in the performance of an appraisal, provided that he is actively and personally supervised by the state licensed or certified appraiser and provided further that any appraisal report rendered in connection with the appraisal is reviewed and signed by the state licensed or certified real estate appraiser.

(5) The provisions of this chapter requiring mandatory licensure or certification shall not apply to employees or agents of the Idaho transportation department when estimating the market value for property that is subject to eminent domain by the department, or property owned by the department that has been declared surplus, where a noncomplex appraisal would normally be ordered, and the market value is ten thousand dollars (\$10,000) or less. Such estimates of market value shall be reviewed and approved by an Idaho state certified general real estate appraiser. Idaho state certified general real estate appraisers who estimate or review market value of property under this section shall be exempt from the requirements of uniform standards of professional appraisal practice. A value estimate shall be provided to the property owner who shall also be informed of his right to request and receive an appraisal of his property.

(6) This chapter shall not prohibit a property owner from expressing his personal opinion of the value of his own property, nor shall the provisions of this chapter prohibit a lender, or employee of a lending institution, from forming and expressing an opinion of collateral value in the ordinary course of business including, but not limited to, mortgaging property, underwriting a loan, or foreclosing a loan, so long as such opinion of collateral value is not represented as being an appraisal of the market value of the property, or prepared under the provisions of this chapter.

(7) This chapter shall not prohibit an attorney or accountant from rendering professional advice within the ordinary course of his profession, so long as such advice is not represented to be an appraisal of the market value of the property.

History.

I.C., § 54-4105, as added by 1990, ch. 82, § 1, p. 164; am. 1992, ch. 92, § 5, p. 282; am. 1993, ch. 320, § 1, p. 1178; am. 1994, ch. 71,

§ 1, p. 148; am. 1996, ch. 137, § 1, p. 462, am. 1996, ch. 322, § 56, p. 1029; am. 1999, ch. 54, § 3, p. 136; am. 2002, ch. 31, § 1, p. 45; am. 2004, ch. 85, § 1, p. 319.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101.

Amendments.

This section was amended by two 1996 acts — ch. 137, § 1, effective July 1, 1996, and ch. 322, § 56, effective January 1, 1997 — which

do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 137, § 1, substituted the present subsection (5) for a former subsection (5) which read, "For a period of two (2) years after the enactment of this act only, the provisions of this chapter

requiring mandatory licensure or certification shall not apply to employees of the Idaho transportation department.”.

The 1996 amendment, by ch. 322, § 56, in subsection (2), substituted “‘appraiser’” for “‘certified evaluator for ad valorem tax purposes,’” and substituted “section 63-105A(17)” for “section 63-513(24)”.

Compiler’s Notes.

For more on the uniform standards of professional appraisal practice, referred to in paragraph (3)(a)(vii) and subsection (5), see http://appraisalinstitute.org/ppc/ethics_standards.aspx.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

54-4106. Real estate appraisers — Real estate appraiser board — Powers and duties — Compensation. — (1) There is hereby created in the department of self-governing agencies, a real estate appraiser board, hereinafter referred to as the “board,” which shall administer the provisions of this chapter. The board shall consist of five (5) members to be appointed by the governor as follows:

(a) One (1) from the northern district consisting of the counties of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner; one (1) from the southeastern district consisting of the counties of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock; one (1) from the southwestern district consisting of the counties of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley; one (1) from the south central district consisting of the counties of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls; and one (1) from the state at large;

(b) On July 1, 1990, the governor shall appoint the members of the board, each of whom shall be a real estate appraiser with not less than five (5) years’ experience in the real estate appraisal business in Idaho. As of July 1, 1999, the board appointment from the state at large is extended for a period of two (2) years and the board appointment from the south central district is extended for a period of one (1) year. Each regular appointment thereafter, other than an appointment to fill an unexpired term, shall be for a term of four (4) years and each board member shall hold office until a successor is appointed and qualified. Upon the death, resignation or removal of any member of the board, the governor shall appoint a state licensed or state certified real estate appraiser to fill the unexpired term. Appointments to fill any vacancy other than that resulting from the expiration of a term shall be made for the unexpired term. After July 1, 1991, new board members shall be required to be state licensed or certified real estate appraisers with not less than five (5) years’ experience in the real estate appraisal business in Idaho;

(c) Within fifteen (15) days after the appointment of the members of the board, the board shall call a meeting and organize by the election of a chairman. Thereafter, the chairman may call meetings of the board whenever he deems it advisable but if he refuses to call a meeting upon written demand of the other four (4) members of the board, then such members may call such meeting. Reasonable notice shall be given in writing by mail of such meeting.

(2) The board shall have, in addition to the powers conferred elsewhere in this chapter, the following powers and duties:

- (a) To authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest;
 - (b) To adopt, pursuant to the administrative procedure act, such rules as the board, in its discretion, deems necessary for the administration and enforcement of this chapter, and any such rules deemed necessary by the board to keep the Idaho real estate appraisers act in compliance with federal law, rule, regulation or policy;
 - (c) To conduct investigations into violations of the provisions of this chapter;
 - (d) To receive applications for and issue licenses or certificates to real estate appraisers pursuant to this chapter;
 - (e) To hold meetings, hearings and examinations at such places and at such times as it shall designate;
 - (f) To collect, deposit and disburse application and other fees, as required by this chapter or federal law;
 - (g) To maintain a register of all state licensed or certified residential and state certified general real estate appraisers;
 - (h) To censure a state licensed or certified appraiser or suspend or revoke appraisal licenses or certificates as provided in this chapter, subject to the provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code; and
 - (i) To adopt rules governing the registration and limitations of real estate appraiser trainees.
- (3) Each member of the board of real estate appraisers shall be compensated as provided in section 59-509(m), Idaho Code.

History.

I.C., § 54-4106, as added by 1990, ch. 82, § 1, p. 164; am. 1992, ch. 92, § 6, p. 282; am. 1996, ch. 66, § 8, p. 198; am. 1999, ch. 162, § 1, p. 448; am. 2001, ch. 132, § 1, p. 477.

STATUTORY NOTES**Cross References.**

Bureau of occupation licenses, § 67-2602. Department of self-governing agencies, § 67-2601 et seq.

54-4107. Disciplinary proceedings. — (1) The board may refuse to issue, refuse to renew or may suspend, revoke or otherwise sanction any license or certificate issued under this chapter for any of the following:

- (a) Procuring licensure or certification pursuant to this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for licensure or certification or through any form of fraud or misrepresentation;
- (b) Being convicted of a felony;
- (c) Making any substantial misrepresentation, false promises or false or fraudulent representation;
- (d) Violating the provisions of this chapter or any rules of the board;
- (e) Being negligent or incompetent, as defined in the uniform standards of professional appraisal practices, in developing an appraisal, in preparing an appraisal report or in communicating an appraisal;

- (f) Accepting an appraisal assignment when the employment is contingent upon the licensed or certified appraiser reporting a predetermined estimate, analysis or opinion, or where the fee to be paid is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment;
 - (g) Violating the confidential nature of governmental records to which he gained access through employment as a licensed or certified appraiser by a governmental agency;
 - (h) Entering into an agreement to perform specialized services for a contingent fee, and failing to clearly state this fact in each written and oral report;
 - (i) Failing as a state licensed or certified real estate appraiser to actively and personally supervise any person not licensed or certified under the provisions of this chapter, who assists said state licensed or certified appraiser in performing real estate appraisals;
 - (j) Having had a license or certificate to practice revoked, suspended or otherwise sanctioned by any other state; or
 - (k) Failing to comply with a board order entered in a disciplinary matter.
- (2) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in civil cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of any district court in this state on application by the board to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The state licensed or certified person accused in such proceedings shall have the same right of subpoena.
- (3) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the administrative procedure act, chapter 52, title 67, Idaho Code.

History.

I.C., § 54-4107, as added by 1990, ch. 82, § 1, p. 164; am. 1992, ch. 92, § 7, p. 282; am.

2008, ch. 108, § 1, p. 306; am. 2012, ch. 48, § 1, p. 143.

STATUTORY NOTES**Cross References.**

Contempt, § 7-601 et seq.

Amendments.

The 2008 amendment, by ch. 108, in subsection (1), rewrote the introductory para-

graph, which formerly read: "The board shall upon a written sworn complaint or may upon its own motion investigate the actions of any state licensed or certified real estate appraiser and may suspend or revoke any license or certificate issued under this chapter

for any of the following"; and added subsection (1)(j).

The 2012 amendment, by ch. 48, added paragraph (1)(k).

fessional appraisal practice, referred to in paragraph (1)(e), see http://appraisal.institute.org/ppc/ethics_standards.aspx.

Compiler's Notes.

For more on the uniform standards of pro-

54-4108. Hearing. — The hearing on any charge of violation of section 54-4107, Idaho Code, shall be at a time and place prescribed by the board.

History.

I.C., § 54-4108, as added by 1990, ch. 82,
§ 1, p. 164.

54-4109. Retention of records. — (1) A state licensed or certified real estate appraiser shall retain, for at least five (5) years, originals or true copies of all written contracts engaging his services for real estate appraisal work, and all reports and supporting data assembled and formulated by the appraiser in preparing the reports.

(2) The five (5) year period for retention of records provided by subsection (1) of this section is applicable to each engagement of the services of the appraiser and shall commence upon the date of the submittal of the appraisal to the client unless, within the five (5) year period, the appraiser is notified that the appraisal or report is involved in litigation, in which event the five (5) year period for the retention of records shall commence upon the date of the final disposition of the litigation.

(3) All records required to be maintained under the provisions of this chapter shall be made available by the licensed or certified real estate appraiser for inspection and copying by the board on reasonable notice to the appraiser.

History.

I.C., § 54-4109, as added by 1990, ch. 82,
§ 1, p. 164; am. 1992, ch. 92, § 8, p. 282.

54-4110. Qualifications for licensure or certification — Examinations. — (1) Any person who desires to obtain licensure or certification as a real estate appraiser shall make written application to the board on such forms as it may prescribe. Each applicant shall satisfy the following requirements:

(a) State licensed residential real estate appraiser. An applicant for licensure as a residential real estate appraiser must satisfactorily complete the education and experience requirements and successfully complete an examination conducted by or authorized by the board as set forth by rules of the board.

(b) State certified residential real estate appraiser. An applicant for certification as a certified residential real estate appraiser must satisfactorily complete the education and experience requirements and successfully complete an examination conducted by or authorized by the board as set forth by rules of the board.

(c) State certified general real estate appraiser. An applicant for certifi-

cation as a general real estate appraiser must satisfactorily complete the education and experience requirements and shall successfully complete an examination conducted or authorized by the board as set forth by rules of the board.

(2) The board may consider and/or adopt some or all of the following: appraiser qualifications criteria adopted by the appraiser qualifications board of the appraisal foundation, the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation, and a code of ethical standards to be set forth by board rule, as well as any forthcoming federal rule or regulation deemed pertinent.

History.

I.C., § 54-4110, as added by 1990, ch. 82,
§ 1, p. 164; am. 1992, ch. 92, § 9, p. 282.

STATUTORY NOTES**Compiler's Notes.**

For more on the uniform standards of professional appraisal practice, referred to in

subsection (2), see http://appraisal_institute.org/ppc/ethics_standards.aspx.

54-4111. Use of designation — Corporation, partnerships. — The term “state licensed or certified real estate appraiser” shall only be used to refer to individuals who hold licenses or certificates under this chapter and may not be used following or immediately in connection with the name of a partnership, association, corporation or group, or in such a manner that it might be interpreted as referring to a firm, partnership, corporation, group or anyone other than an individual holder of the license or certificate. No license or certificate shall be issued under the provisions of this chapter to a firm, partnership, corporation or group practice. However, this subsection [section] shall not be construed to prevent a state licensed or certified real estate appraiser from signing an appraisal report on behalf of a corporation, partnership, firm or group practice.

History.

I.C., § 54-4111, as added by 1990, ch. 82,
§ 1, p. 164; am. 1992, ch. 92, § 10, p. 282.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertion in the last sentence

was added by the compiler to clarify the internal reference.

54-4112. Regular examinations. — The board shall hold each year at least one (1) examination for licensure or certification to practice real estate appraisal, if there be any such applicants. The examinations shall be conducted by the real estate appraiser board under fair and wholly impartial methods and subject to such rules as the board may establish to test the applicant's qualifications in all branches of the professional practice of appraisal.

History.

I.C., § 54-4112, as added by 1990, ch. 82,
§ 1, p. 164; am. 1992, ch. 92, § 11, p. 282.

54-4113. Fees — Issuance of licenses or certificates. — (1) Every person applying for examination or reexamination under this chapter shall pay a fee equal to that charged by the national examining entity. If the result of the examination of any applicant shall be satisfactory to the board, under its rules, it shall issue to such applicant a license or certificate setting forth the fact that he is a state licensed or certified real estate appraiser and authorized to practice his profession in this state. The fee for obtaining a license or certificate under the provisions of this chapter shall be an amount not to exceed five hundred dollars (\$500). The annual fee for renewal or reinstatement of a license or certificate shall be an amount not to exceed five hundred dollars (\$500), which shall be paid to the bureau. The board shall adopt all fees by rule.

(2) In addition to those fees described in this section, the board may collect from applicants for licensure or certification and holders of state licenses or certificates of appraisal and remit to the appropriate agency or instrumentality of the federal government, any additional fees as may be required to render Idaho state licensed residential, certified residential and general real estate appraisers eligible to perform appraisals in connection with federally-related transactions.

(3) The board may collect continuing education provider application fees in an amount not to exceed one hundred dollars (\$100) as established by board rule.

History.

I.C., § 54-4113, as added by 1990, ch. 82,
§ 1, p. 164; am. 1992, ch. 92, § 12, p. 282; am.

2008, ch. 108, § 2, p. 307; am. 2011, ch. 84,
§ 1, p. 175.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2008 amendment, by ch. 108, in the first sentence, deleted “for a license or certificate” following “examination,” inserted “or reexamination,” and substituted “pay a fee equal to that charged by the national examining entity” for “pay a fee of not to exceed three hundred fifty dollars (\$350) to the bu-

reau of occupational licenses”; deleted the former second sentence, which read: “In case the applicant fails to qualify, said fee shall be retained by the bureau to cover the necessary expenses of said examination”; and deleted the former fourth sentence, which read: “The fee for reexamination shall not exceed two hundred dollars (\$200).”

The 2011 amendment, by ch. 84, added the subsections (1) and (2) designations to the existing provisions and added subsection (3).

54-4114. Term of license or certificate — Renewal and reinstatement. — All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

History. § 1, p. 164; am. 1992, ch. 92, § 13, p. 282; am. I.C., § 54-4114, as added by 1990, ch. 82, 2003, ch. 21, § 19, p. 77.

54-4115. Nonresident licensure or certification and temporary practice. — (1) Nonresident licensure or certification. If the board determines that another state has substantially equivalent requirements for appraiser licensure or certification, an applicant from such other state may obtain a license or certificate to practice as a licensed or certified residential or general real estate appraiser in this state, subject to the rules set forth by the board.

(2) Temporary practice. Only to the extent required by federal law, and subject to the rules set forth by the board, a temporary license or certificate for real estate appraisal may be issued to an individual from another state.

(3) Service of process. Prior to and as a condition of an individual's application for either a nonresident license or certificate or a temporary license or certificate, said applicant who is not a resident of Idaho shall submit with his application an irrevocable consent, on a form prescribed by the board, that service of process in any action against the applicant arising out of the applicant's activities as a state licensed or certified real estate appraiser may be made by delivery of process on the board.

History. § 1, p. 164; am. 1992, ch. 92, § 14, p. 282; am. I.C., § 54-4115, as added by 1990, ch. 82, 2012, ch. 48, § 2, p. 143.

STATUTORY NOTES

Amendments. following "licensure or certification" in subsection (1).
The 2012 amendment, by ch. 48, deleted "and reciprocity exists between the states"

54-4116. Renewal licenses or certificates. — To obtain a renewal license or certificate to practice as a state licensed or certified real estate appraiser, the holder of the current license or certificate shall make application and pay the prescribed fee to the board. Further, the applicant shall present evidence in a form satisfactory to the board of having successfully completed any continuing education requirements for renewal as shall be specified by rule of the board.

History. I.C., § 54-4116, as added by 1990, ch. 82, § 1, p. 164; am. 1992, ch. 92, § 15, p. 282.

54-4117. Injunctive relief. — The board is hereby authorized to institute injunction proceedings in the district court of competent jurisdiction, pursuant to the Idaho rules of civil procedure, for cause shown, to restrain any person or persons from violating any provision of this chapter regardless of whether or not there exists an adequate remedy at law.

History. I.C., § 54-4117, as added by 1990, ch. 82, § 1, p. 164.

54-4118. Proof of complaint — Prosecution by county attorney. — The board may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction. It shall be the duty of the prosecuting attorney of each county in the state to prosecute all violations of the aforesaid provisions of this chapter in their respective counties in which said violations occur.

History.

I.C., § 54-4118, as added by 1990, ch. 82,
§ 1, p. 164.

54-4119. Penalty for violation. — Any person who acts as or holds himself out to be, a state licensed or certified residential or state certified general real estate appraiser within the meaning of this chapter without first obtaining a license or certificate as provided herein, may be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment in the discretion of the court. The board may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction and in any manner prescribed in section 54-4118, Idaho Code.

History.

I.C., § 54-4119, as added by 1990, ch. 82,
§ 1, p. 164; am. 1992, ch. 92, § 16, p. 282.

CHAPTER 42

IDAHO RESIDENTIAL CARE ADMINISTRATORS ACT

SECTION.

- 54-4201. Short title.
- 54-4202. Definitions.
- 54-4203. Facility supervision by licensed administrator required — Practice by unlicensed person prohibited — Provisional license.
- 54-4204. Board of examiners of residential care facility administrators.
- 54-4205. Functions and duties of the board — Fee for license applicants — Rules.
- 54-4206. Qualifications for examination for license.
- 54-4207. Subject matter of examination — Frequency.

SECTION.

- 54-4208. Issuance of license — Educational programs.
- 54-4209. Licensure — Attendance at continuing education program — Renewal of licenses.
- 54-4210. Endorsement of licenses.
- 54-4211. Provisional permits.
- 54-4212. Misdemeanors listed — Penalties.
- 54-4213. Disciplinary action.
- 54-4214. Reissuance of revoked license or permit.
- 54-4215. Judicial review of board action.
- 54-4216. Disposition of receipts — Expense — Refund.

54-4201. Short title. — This chapter shall be known and may be cited as the “Idaho Residential Care Facility Administrators Act.”

History.

I.C., § 54-4201, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 133, p. 799; am. 2003, ch. 201, § 4, p. 529.

54-4202. Definitions. — As used in this chapter:

(1) "Board" means the board of examiners of residential care facility administrators of the state of Idaho.

(2) "Examiner" means a member of the board of examiners of residential care facility administrators of the state of Idaho.

(3) "Executive secretary" means the secretary of the board of examiners of residential care facility administrators of the state of Idaho.

(4) "Practice of residential care facility administration" means that planning, organizing, directing and control of the operation of a residential care facility.

(5) "Provisional permit" means a temporary permit issued to a provisional residential care facility administrator under the provisions of this chapter.

(6) "Provisional residential care facility administrator" means an individual who has been issued a permit as such under the provisions of this chapter.

(7) "Residential care facility" means a residential or assisted living facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more elderly, developmentally disabled, physically disabled and/or mentally ill adults not related to the owner.

(8) "Residential care facility administrator" means any individual responsible for planning, organizing, directing and controlling the operation of a residential care facility, or who in fact performs such functions, whether or not such functions are shared by one (1) or more other persons, and who is licensed under the provisions of this chapter.

History.

I.C., § 54-4202, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 134, p. 799; am. 2003, ch. 201, § 5, p. 529.

54-4203. Facility supervision by licensed administrator required — Practice by unlicensed person prohibited — Provisional license.

— Effective July 1, 1991, no residential care facility in the state shall be operated unless it is under the supervision of a person who holds a currently valid residential care facility administrator's license, or provisional permit, issued pursuant to this chapter. No person shall practice or offer to practice residential care facility administration in this state or use any title, sign, card or device to indicate that he is a residential care facility administrator unless such person is duly licensed or holds a current provisional permit as required by this chapter.

History.

I.C., § 54-4203, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 135, p. 799; am. 2003, ch. 201, § 6, p. 529.

54-4204. Board of examiners of residential care facility administrators. — (1) There is hereby created in the department of self-governing agencies a board of examiners of residential care facility administrators that shall consist of five (5) members and be composed of two (2) residential care facility administrators, duly licensed and registered under this chapter, one

(1) member shall be selected from any other profession or agency or institution concerned with the care of persons requiring assistance with the daily activities of living, one (1) licensed nurse from the nursing profession and one (1) member representative of the public at large; but no more than two (2) of the members of the board shall be officials or full-time employees of state or local governments. All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state.

(2) The term of office for each member of the board shall be three (3) years.

(3)(a) Appointments to the board shall be made by the governor after consultation with the executive board of any organized and generally recognized group concerned with residential care facility administration. Each member of the board shall hold office until his successor is duly appointed and qualified. Dismissals shall be by the governor, for reasonable cause.

(b) The two (2) residential care facility administrators must be appointed from a list of three (3) submitted by any organized and generally recognized group concerned with residential care facility administration.

(c) Members of the board shall be compensated as provided in section 59-509(l), Idaho Code.

(4) The board shall elect annually from its membership a chairman and vice chairman. The board shall hold two (2) or more meetings each year. A majority of the board membership shall constitute a quorum.

(5) The board shall exercise its powers and perform its duties and functions specified by this chapter.

(6) The board may, by written agreement, authorize the bureau of occupational licenses, or other appropriate body as provided by law, as agent to act in its interest.*

History.

I.C., § 54-4204, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 136, p. 799;

am. 2003, ch. 201, § 7, p. 529; am. 2011, ch. 77, § 1, p. 162.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies, § 67-2601 et seq.

Amendments.

The 2011 amendment, by ch. 77, deleted “and three (3) other members as hereinafter described, except that such members of the initial board shall be required only to possess the qualifications and be eligible for licensure as required under this chapter” following

“duly licensed and registered under this chapter” in the first sentence in subsection (1); deleted the former first sentence in subsection (2), which read: “One (1) member of the initial board shall be appointed for a one (1) year term of office, two (2) members of the initial board shall be appointed for a two (2) year term of office, and two (2) members of the initial board shall be appointed for a three (3) year term of office”; and substituted “59-509(l), Idaho Code” for “59-509(f), Idaho Code” in paragraph (3)(c).

54-4205. Functions and duties of the board — Fee for license applicants — Rules. — (1) It shall be the functions and duties of such board to:

- (a) Develop, impose and enforce standards consistent with this chapter which shall be met by individuals in order to receive and retain a license or permit as a residential care facility administrator. Such standards shall be designed to ensure that residential care facility administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as residential care facility administrators;
 - (b) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;
 - (c) Issue licenses and permits to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses and permits previously issued by the board in any case where the individual holding any such license or permit is determined to have violated the provisions of this chapter;
 - (d) Establish and carry out procedures designed to ensure that individuals licensed as residential care facility administrators will, during any period that they serve as such, comply with the requirements of such standards;
 - (e) Receive, investigate and take appropriate action with respect to any charge or complaint filed with the board charging that any individual licensed as a residential care facility administrator has failed to comply with the requirements of such standards;
 - (f) Conduct a continuing study and investigation of residential care facility administrators to improve the standards imposed in order to obtain a license or a permit and to improve the procedures and methods for the enforcement of such standards with respect to those who have obtained a license or a permit;
 - (g) The board shall establish by rule a fee schedule not to exceed two hundred dollars (\$200) each for applications for licenses, provisional permits, annual renewal and applications for endorsement of a license issued by the proper authorities in another state.
- (2) The board or any committee or member thereof or any hearing officer designated by such board, acting in an official capacity, shall have powers and duties as provided by law. Such board shall not be bound by the strict rules of evidence in the conduct of its proceedings but any determinations made shall be founded upon sufficient legal evidence to sustain them.
- (3) The board shall also have the authority to make rules not inconsistent with law as may be necessary for the proper performance of its duties.
- (4) The board shall have the authority to adopt a code of ethics for residential care facility administrators in the state which shall be adopted in compliance with chapter 52, title 67, Idaho Code.

History.

I.C., § 54-4205, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 137, p. 799;

am. 2003, ch. 201, § 8, p. 529; am. 2007, ch. 134, § 1, p. 393.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 134, substituted “two hundred dollars (\$200)” for “one hundred dollars (\$100)” in subsection (1)(g).

54-4206. Qualifications for examination for license. — (1) The board shall admit to the examination for licensure as a residential care facility administrator any candidate who submits the required application, pays a fee as determined by the board, submits evidence of good moral character and suitability prescribed by the board and is at least twenty-one (21) years old; and

(2) Each applicant shall submit evidence satisfactory to the board that he has successfully completed specialized courses or a program of study in the area of residential care facility administration as required and approved by the rules of the board; and

(3) Each applicant shall meet one (1) of the following combinations of education and experience:

(a) A high school diploma or equivalent and eight hundred (800) hours of on-site experience in a residential care facility under the supervision of a licensed administrator;

(b) An associate degree from an accredited college or university or equivalent and four hundred (400) hours of on-site experience in a residential care facility under the supervision of a licensed administrator; or

(c) A bachelor’s degree from an accredited college or university and two hundred (200) hours of on-site experience in a residential care facility under the supervision of a licensed administrator.

(4) A candidate who applies for examination under and pursuant to this section, but who does not otherwise meet the experience requirements provided for in subsection (3) of this section, may submit evidence satisfactory to the board that such applicant has satisfactory practical experience obtained in an internship training program in residential care facility administration as approved by the board or in a medical or health care facility as approved by the board.

History.

I.C., § 54-4206, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 138, p. 799; am. 2003, ch. 201, § 9, p. 529; am. 2011, ch. 92, § 1, p. 201.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 92, rewrote the section to the extent that a detailed comparison is impracticable.

54-4207. Subject matter of examination — Frequency. — (1) The board shall determine the subjects of examinations for applicants for licensure and the scope, content, and format of such examinations. The board may approve more than one (1) examination to qualify an applicant for licensure. The examination, or examinations, of an applicant for

licensure shall demonstrate an applicant's proficiency in the practice of, and knowledge of, applicable rules of health and safety within the state.

(2) Examinations shall be held at least semiannually at such times and places as the board shall designate.

History.

I.C., § 54-4207, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 139, p. 799;

am. 2003, ch. 201, § 10, p. 529; am. 2008, ch. 93, § 1, p. 258.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 93, rewrote subsection (1), which formerly read: "The board shall determine the subjects of examination for applicants for licensure and the scope, content, and format of such examina-

tions which in any examination shall be the same for all candidates; except that such examination shall include examination of the applicant to demonstrate his proficiency in the practice of, and knowledge of, applicable rules of health and safety within the state."

54-4208. Issuance of license — Educational programs. — (1) An applicant for a license as a residential care facility administrator who has successfully complied with the requirements of section 54-4206, Idaho Code, and the standards provided for therein, has passed the examination provided for in section 54-4207, Idaho Code, and, where applicable, has complied with the requirements of section 54-4211, Idaho Code, shall be issued a license.

(2) Any license issued by the board under or pursuant to the provisions of this section shall be under the hand and seal of the chairman of the board.

(3) The board may approve programs conducted within and outside of this state as sufficient to meet education and training requirements established pursuant to this chapter.

History.

I.C., § 54-4208, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 140, p. 799;

am. 2003, ch. 201, § 11, p. 529; am. 2006, ch. 125, § 1, p. 360.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 125, deleted "If the board finds that programs of training and instruction conducted within the state are not sufficient in number or content to enable applicants for residential care facility administrators' licenses and residential care

facility administrators to meet requirements established pursuant to this chapter, it shall institute and conduct or arrange with others to conduct one (1) or more such programs, and shall make provision for their accessibility to appropriate residents of this state" from the beginning of subsection (3).

54-4209. Licensure — Attendance at continuing education program — Renewal of licenses. — (1) Every individual who qualifies for licensure by the board under section 54-4208(1), Idaho Code, shall be issued a license. Thereafter, such individual shall annually be required to apply to the board for a license renewal and report any facts requested by the board on forms provided for such purpose. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for

renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) Upon making an application for license renewal, each individual shall pay an annual renewal fee, and submit proof of the satisfactory completion of the required continuing education as may be provided in the rules of the board.

(3) Upon receipt of the renewal application, the required fee, and the proof of continuing education, the board shall issue a current license.

(4) A residential care facility administrator who has been duly licensed in this state and whose license has not been revoked or suspended, and whose license has expired for a period of not longer than five (5) years, may apply for the reinstatement of his license by filing with the board an application together with proof of having met the continuing education requirement within the previous twelve (12) months in accordance with the rules of the board, and payment of a twenty-five dollar (\$25.00) reinstatement fee together with the renewal fees for all lapsed years.

(5) The board shall maintain a register of all applications for licensing of residential care facility administrators, which register shall show: The name and address of each applicant, the name and address of employer or business connection of each applicant, the date of application, complete information of educational and experiential qualifications, the license issue date, the license number, the certificate issue date, the date on which the board reviewed and acted upon the application, and such other pertinent information as the board may deem necessary.

History.

I.C., § 54-4209, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 141, p. 799;

am. 2003, ch. 21, § 20, p. 77; am. 2003, ch. 201, § 12, p. 529.

STATUTORY NOTES

Amendments.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendments by ch. 21, § 20 and ch. 201, § 12 both rewrote this section, each making identical changes.

54-4210. Endorsement of licenses. — The board, in its discretion, and otherwise subject to the provisions of this chapter and the rules of the board may endorse a residential care facility administrator license issued by the proper authorities of any other state upon payment of a fee and upon submission of evidence meeting such requirements as are established by the rules of the board.

History.

I.C., § 54-4210, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 142, p. 799;

am. 2001, ch. 24, § 1, p. 29; am. 2003, ch. 201, § 13, p. 529.

54-4211. Provisional permits. — (1) Pending issuance of a license, the board may issue a provisional permit for a period not exceeding three (3) months, without an examination to an applicant who files a written application for a provisional permit and who is otherwise qualified and

meets the requirements of either section 54-4206(2) or (3), Idaho Code, and is applying to fill a vacancy on an emergency basis.

(2) Any individual who holds a valid Idaho nursing home administrator's license and is in good standing according to the provisions of chapter 16, title 54, Idaho Code, may be deemed to meet the requirements for issuance of a residential care facility administrator's license and may be issued one, upon application and payment of appropriate fees.

History.

I.C., § 54-4211, as added by 1990, ch. 304, § 1, p. 833; am. 2000, ch. 274, § 143, p. 799;

am. 2003, ch. 201, § 14, p. 529; am. 2006, ch. 125, § 2, p. 360; am. 2012, ch. 168, § 1, p. 448.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 125, substituted "may be deemed" and "may be issued" for "shall be deemed" and "shall be issued" in subsection (b).

The 2012 amendment, by ch. 168, substituted "and meets the requirements of either section 54-4206(2) or (3)" for "but does not meet the examination requirements" in subsection (1).

54-4212. Misdemeanors listed — Penalties. — (1) It shall be a misdemeanor for any person to:

- (a) Sell or fraudulently obtain or furnish any license or aid or abet therein; or
- (b) Practice as a residential care facility administrator under cover of any license or permit illegally or fraudulently obtained or unlawfully issued; or
- (c) Practice as a residential care facility administrator or use in connection with his or her name any designation tending to imply that he or she is a residential care facility administrator unless duly licensed and registered to so practice under the provisions of this chapter; or
- (d) Practice as a residential care facility administrator during the time his or her license or permit issued under the provisions of this chapter shall be suspended or revoked; or
- (e) Otherwise violate any of the provisions of this chapter.

(2) Such misdemeanor shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment.

History.

I.C., § 54-4212, as added by 1990, ch. 304,

§ 1, p. 833; am. 2000, ch. 274, § 144, p. 799; am. 2003, ch. 201, § 15, p. 529.

54-4213. Disciplinary action. — (1) The board may revoke or suspend, or refuse to renew, or refuse to issue, any license or permit issued under the provisions of this chapter, or may reprimand, censure or otherwise discipline the holder of a license or permit in accordance with the provisions of this section upon decision and after due hearing in any of the following cases:

- (a) Upon proof that such licensee is reasonably unfit to operate a residential care facility;
- (b) Upon proof of the willful or repeated violation of any of the provisions

of this chapter or the rules enacted in accordance with, or of willful or repeated actions in a manner inconsistent with the health and safety of patients;

(c) Upon proof that such licensee has committed fraud or deceit in the practice of residential care facility administration or related activities or in the licensee's admission to such practice;

(d) Upon proof that such licensee has permitted the unauthorized disclosure of information relating to a resident in the residential care facility under the administration of the licensee;

(e) Conviction of, pleading guilty or nolo contendere to, or receiving a withheld judgment of, a felony or any crime involving dishonesty or the health or safety of a person;

(f) Upon proof that the administrator had a license to practice a health care profession or occupation in another state or jurisdiction and such license was suspended or revoked or the administrator has otherwise been disciplined.

(2) The board, or a hearing officer designated by it, shall have jurisdiction to hear all charges brought under the provisions of this section against residential care facility administrators, or provisional residential care facility administrators, and upon such hearings shall determine such charges upon their merits.

(3) Proceedings under this section shall be initiated by filing with the board, charges in writing and under oath. The board on its own motion may conduct an investigation and initiate charges. The procedures for notification and the hearing on such charges, unless dismissed by the board as unfounded or trivial, shall be conducted pursuant to the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 54-4213, as added by 1990, ch. 304, § 1, p. 833; am. 1993, ch. 216, § 92, p. 587;

am. 2000, ch. 274, § 145, p. 799; am. 2003, ch. 201, § 16, p. 529; am. 2006, ch. 125, § 3, p. 360.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 125, in subsection (1)(c), substituted "committed" for

"been convicted or found guilty of" and added "or in the licensee's admission to such practice"; and added subsections (1)(d) to (f).

54-4214. Reissuance of revoked license or permit. — (1) The board may, in its discretion, reissue a license or permit to any person whose license or permit has been revoked.

(2) Application for the reissuance of a license or permit shall be made in such manner as the board may direct in accordance with its rules.

History.

I.C., § 54-4214, as added by 1990, ch. 304, § 1, p. 833; am. 2003, ch. 201, § 17, p. 529.

54-4215. Judicial review of board action. — Anyone aggrieved by an action of the board may seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 54-4215, as added by 1990, ch. 304,
§ 1, p. 833; am. 1993, ch. 216, § 93, p. 587.

54-4216. Disposition of receipts — Expense — Refund. — All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational license account and all costs and expenses incurred by the board under the provisions of this chapter shall be a charge against and paid from the account for such purposes, and the funds collected hereunder shall be immediately available for the administration of this chapter, the provisions of other law notwithstanding. In no instance will the occupational license account be obligated to pay any claims which in aggregate with claims already paid exceed the income to the occupational license account which has been derived by the application of this chapter.

The money paid into the occupational license account is continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and in carrying out and enforcing the provisions of this chapter.

History.

I.C., § 54-4216, as added by 1990, ch. 304,
§ 1, p. 833.

STATUTORY NOTES**Cross References.**

Occupational license account, § 67-2605.

CHAPTER 43**RESPIRATORY CARE PRACTICE ACT****SECTION.**

- 54-4301. Short title.
- 54-4302. Legislative intent.
- 54-4303. Definitions.
- 54-4304. License or temporary permit required.
- 54-4304A. Polysomnography related respiratory care.
- 54-4305. Effective date — Licensure or temporary permit required beginning 1992.
- 54-4306. Requirements for licensure.
- 54-4307. Temporary permit.
- 54-4308. Exemptions.
- 54-4309. Issuance of license or temporary permit.
- 54-4310. Renewal of license or temporary permit.

SECTION.

- 54-4311. Fees.
- 54-4312. Suspension and revocation of license or temporary permit — Refusal to renew.
- 54-4313. Licensure board.
- 54-4314. Board of medicine and licensure board — Powers and duties.
- 54-4315. Board of medicine — Administrative provisions.
- 54-4316. Rules and regulations.
- 54-4317. Contracts for verification.
- 54-4318. Use or display of professional designations or credentials.
- 54-4319. Misrepresentation — Consumer protection act.
- 54-4320. Penalties.
- 54-4321. Severability.

54-4301. Short title. — The provisions of this chapter shall be known and may be cited as the “Respiratory Care Practice Act of 1991.”

History.

I.C., § 54-4301, as added by 1991, ch. 294,
§ 1, p. 760.

54-4302. Legislative intent. — In order to promote the public health, safety, and welfare; to promote the highest degree of professional conduct on the part of persons providing respiratory care to the public; and to assure the availability of respiratory care services of high quality to persons in need of such services, it is the purpose of the provisions of this chapter to provide for the licensure and regulation of persons offering respiratory care services to the public.

History.

I.C., § 54-4302, as added by 1991, ch. 294,
§ 1, p. 760.

54-4303. Definitions. — As used in this chapter:

(1) “Act” means the respiratory care practice act of 1991, chapter 43, title 54, Idaho Code.

(2) “Applicant” means a person who applies for a license, permit or a temporary permit pursuant to this chapter.

(3) “Board” means the Idaho state board of medicine established by and constituted pursuant to section 54-1805, Idaho Code, or any successor section or statute.

(4) “Certified pulmonary function technologist” (CPFT) means the professional designation earned by a person who has successfully completed the entry level pulmonary function certification examination administered by the national board for respiratory care, inc.

(5) “Certified respiratory therapy technician” (CRTT) means the professional designation earned by a person who has successfully completed the entry level examination administered by the national board for respiratory care, inc.

(6) “Entry level examination” means the certification examination for entry level respiratory therapy practitioners administered by the national board for respiratory care, inc., the successful completion of which entitles a person to the professional designation of “certified respiratory therapy technician” (CRTT).

(7) “Licensed physician” means a physician licensed by the board.

(8) “Licensure” means the issuance of a license to an applicant under the provisions of this chapter entitling such person to hold himself out as a respiratory care practitioner and entitling him to practice or perform respiratory care in the state.

(9) “Licensure board” means the licensure board established by this chapter to accept applications under this chapter, to make recommendations and consult with the board and to perform such other duties as may be required or authorized in this chapter or by the board.

(10) “National board for respiratory care, inc.” means the nationally recognized private testing, examining and credentialing body for the respiratory care profession.

(11) “Performance of respiratory care” means respiratory care practiced

or performed in accordance with the written, telephonic or verbal prescription of a licensed physician and includes, but is not limited to, the diagnostic and therapeutic use of the following: administration of medical gases, (except for the purpose of anesthesia), aerosols and humidification; environmental control mechanisms and hyperbaric therapy; pharmacologic agents related to respiratory care protocols; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airway; insertion and maintenance of artificial airways; specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures and flows, collection, reporting and analysis of specimens of blood and blood gases, arterial punctures, insertion and maintenance of arterial lines, expired and inspired gas samples, respiratory secretions, and pulmonary function testing; and hemodynamic and other related physiologic measurements of the cardiopulmonary system; observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; implementation based on observed abnormalities of appropriate reporting or referral of respiratory care or changes in treatment regimen, pursuant to a prescription by a physician or the initiation of emergency procedures.

(12) "Person" means an individual.

(13) "Polysomnography" means the process of analysis, attended monitoring and recording of physiologic data during sleep and wakefulness to assist in the assessment and diagnosis of sleep/wake disorders and other disorders, syndromes and dysfunctions that either are sleep related, manifest during sleep or disrupt normal sleep/wake cycles and activities.

(14) "Polysomnography related respiratory care services" means the limited practice of respiratory care in the provision of polysomnography services, under the supervision of an Idaho licensed physician, by a person at a sleep disorder center or laboratory who holds a permit issued by the board as a registered polysomnographic technologist, polysomnographic technician or a polysomnographic trainee, or who is otherwise licensed as a respiratory care practitioner or who is exempt from licensure or permitting pursuant to section 54-4308, Idaho Code. Polysomnography related respiratory care services include therapeutic and diagnostic use of oxygen, noninvasive ventilatory assistance of spontaneously breathing patients and cardiopulmonary resuscitation and maintenance of nasal and oral airways that do not extend into the trachea, as ordered by an Idaho licensed physician or by written procedures and protocols of the associated sleep disorder center or laboratory as approved by an Idaho licensed physician and which do not violate a rule adopted by the board. This chapter does not in any way authorize the practice of medicine or any of its branches by any person not so licensed by the board. Further, licensed respiratory practitioners, and those exempt from licensure pursuant to section 54-4308, Idaho Code, are not limited in their scope of practice of provision of respiratory

care which they may provide, including in connection with the provision of polysomnography services.

(15) "Polysomnographic technician" means a person who holds a permit as set forth in section 54-4304A, Idaho Code, and who performs polysomnography related respiratory care services under the supervision of an Idaho permitted registered polysomnographic technologist, licensed respiratory care practitioner or an Idaho licensed physician.

(16) "Polysomnographic trainee" means a person who holds a temporary permit as set forth in section 54-4304A, Idaho Code, and who performs polysomnography related respiratory care services under the direct supervision of an Idaho licensed respiratory care practitioner, or a person exempt from such licensure pursuant to section 54-4308, Idaho Code, an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician or an Idaho licensed physician. Direct supervision by an Idaho licensed respiratory care practitioner, or such person exempt from such licensure pursuant to section 54-4308, Idaho Code, or an Idaho permitted registered polysomnographic technologist or technician, or an Idaho licensed physician, means that such a person shall be on the premises where such polysomnographic related respiratory care services are provided and shall be immediately available for consultation with the polysomnographic trainee.

(17) "Practice of respiratory care" means, but shall not be limited to, the provision of respiratory and inhalation therapy which shall include, but not be limited to: therapeutic and diagnostic use of medical gases, humidity and aerosols including the maintenance of associated apparatus; administration of drugs and medications to the cardiorespiratory system; provision of ventilatory assistance and ventilatory control; postural drainage, percussion, breathing exercises and other respiratory rehabilitation procedures; cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways; and the transcription and implementation of a physician's written, telephonic or verbal orders pertaining to the practice of respiratory care. It also includes testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment and research. This shall be understood to include, but not be limited to, measurement of ventilatory volumes, pressures and flows, specimen collection of blood and other materials, pulmonary function testing and hemodynamic and other related physiological monitoring of the cardiopulmonary system. The practice of respiratory care is not limited to the hospital setting but shall be performed under the general supervision of a licensed physician.

(18) "Registered polysomnographic technologist" means a person who holds a permit as set forth in section 54-4304A, Idaho Code, and who works under the supervision of an Idaho licensed physician to provide polysomnography related respiratory care services.

(19) "Respiratory care" means the allied health profession responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, under the general supervision of a licensed physician.

(20) "Respiratory care practitioner" means a person who has been issued a license by the board under the provisions of this chapter.

(21) "Respiratory care protocols" means policies, procedures or protocols developed or instituted by health care facilities or institutions, through collaboration when appropriate or necessary with administrators, physicians, registered nurses, physical therapists, respiratory care practitioners and other licensed, certified or registered health care practitioners.

(22) "Registered pulmonary function technologist" (RPFT) means the professional designation earned by a person who has successfully completed the advanced pulmonary function certification examination administered by the national board for respiratory care, inc.

(23) "Registered respiratory therapist" (RRT) means the professional designation earned by a person who has successfully completed the written registry and clinical simulation examinations administered by the national board for respiratory care, inc.

(24) "Respiratory therapist" means a person who practices or provides respiratory care.

(25) "Respiratory therapy" means the practice or performance of respiratory care as defined in this chapter including, but not limited to, inhalation therapy.

(26) "Sleep disorder center or laboratory" means a facility for sleep related disorders that provides polysomnography and is under the supervision of an Idaho licensed physician or medical director licensed by the board who is responsible for patient care provided in such center or laboratory. A sleep disorder center or laboratory which provides polysomnography related respiratory care to patients shall have an Idaho licensed respiratory care practitioner, an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician, or a person exempt from licensure or permitting pursuant to section 54-4308, Idaho Code, in constant attendance.

(27) "Written registry and clinical simulation examinations" means the certification examinations administered by the national board for respiratory care, inc., the successful completion of which entitles a person the professional designation of "registered respiratory therapist" (RRT).

History.

I.C., § 54-4303, as added by 1991, ch. 294,
§ 1, p. 760; am. 2003, ch. 254, § 1, p. 655.

STATUTORY NOTES

Compiler's Notes.

The words and abbreviations enclosed in parentheses so appeared in the law as enacted.

For more on the national board for respiratory care, inc., see <http://www.nbrc.org>.

54-4304. License or temporary permit required. — Except as otherwise provided in this chapter, it shall be unlawful for any person to practice or perform or to offer to practice or perform respiratory care or for a person or entity to represent a person to be a respiratory therapist or

respiratory care practitioner unless such person is licensed as a respiratory care practitioner, holds a valid temporary permit or is exempt from the requirements of this chapter. Only an individual may be licensed or granted a temporary permit under this chapter.

History.

I.C., § 54-4304, as added by 1991, ch. 294,
§ 1, p. 760.

54-4304A. Polysomnography related respiratory care. — (1) Only persons who are licensed as respiratory care practitioners or who are exempt from licensure pursuant to section 54-4308, Idaho Code, or who hold a permit issued by the board as registered polysomnographic technologists, polysomnographic technicians or polysomnographic trainees may provide polysomnography related respiratory care services.

(2) Qualification for permit. An applicant for a permit to provide polysomnography related respiratory care services as a registered polysomnographic technologist or polysomnographic technician or for a temporary permit as a polysomnographic trainee under the provisions of this section who is not otherwise licensed to provide respiratory care services or exempt from the requirements of this chapter pursuant to section 54-4308, Idaho Code, must:

- (a) Submit an application to the licensure board on forms prescribed by the board and in accordance with the rules adopted by the board pay the permit fee required under this chapter;
- (b) Be, on or before the date of issuance of the permit, eighteen (18) years of age or older;
- (c) Not have been convicted of an offense or disciplined by a licensing body in a manner that bears, in the judgment of the board, a demonstrable relationship to the provision of polysomnography related respiratory care services;
- (d) Be a high school graduate or have passed a general educational development (GED) examination and earned a GED certificate; and
- (e) Be currently certified in cardiopulmonary resuscitation (CPR).

(3) Registered polysomnographic technologist. An applicant must possess the following qualifications: successful completion of the certification examination as a registered polysomnographic technologist administered by the board of registered polysomnographic technologists (BRPT) or an equivalent examination, approved by the board as recommended by the licensure board, and any additional reasonable minimal requirements as may be adopted by rule of the board.

(4) Polysomnographic technician. An applicant must possess the following qualifications:

- (a) Successful completion of a polysomnography program of not less than one (1) year duration, associated with a state licensed or a nationally accredited educational facility; or
- (b) Successful completion of a minimum of seven hundred twenty (720) hours of experience as a polysomnographic trainee with documented proficiency in polysomnography related respiratory care services, as

approved by the board, as recommended by the licensure board and adopted by board rule.

(5) Polysomnographic trainee. An applicant must provide written documentation that an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician, an Idaho licensed respiratory care provider, or an Idaho licensed physician will directly supervise the applicant's performance of basic polysomnography related respiratory care services and provide documentation of at least one (1) of the following:

(a) That the applicant has at least seven hundred twenty (720) hours of experience as a paid employee or contractor in a health care related field;

(b) That the applicant is currently enrolled in a polysomnography program associated with a state licensed or a nationally accredited education facility; or

(c) That the applicant has successfully completed twenty-four (24) semester credit hours (or a quarter hour system equivalent of the same) of postsecondary education at a state licensed or nationally accredited facility.

(6) Permits.

(a) Permits for registered polysomnographic technologists and permits for polysomnographic technicians shall be issued after applicants have met the requirements of this chapter and submitted an application and payment of a fee in an amount to be fixed by the board. Permits, including renewals, for registered polysomnographic technologists shall be issued for a period of not less than one (1) year nor more than five (5) years, the exact period to be fixed by the board. Permits, including renewals, for polysomnographic technicians shall be issued for a period of one (1) year, and shall be renewed for successive one (1) year periods, not to exceed three (3) renewals for a total period of four (4) years. Such permits shall be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee in an amount to be fixed by the board.

(b) Temporary permits for polysomnographic trainees shall be issued after applicants have met the requirements of this chapter and submitted an application and payment of a fee in an amount to be fixed by the board. Such permits shall be issued for a period of not more than one (1) year, the exact period to be fixed by the board. Such permits may be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee in an amount to be fixed by the board, for a period of one (1) year, with renewal limited to one (1) such renewal, provided however, such permits for polysomnographic trainees shall be limited to a total period of two (2) years.

(c) Each individual applicant for renewal of an active permit shall, on or before the expiration date of the permit, submit satisfactory proof to the licensure board of successful completion of not less than twelve (12) hours of approved continuing education per year in addition to any other requirements for renewal as adopted by board rule. The board, as recommended by the licensure board, may substitute all or a portion of the

coursework required in this section when a permittee shows evidence of passing an approved challenge exam or of completing equivalent education as determined by the board, as recommended by the licensure board, to be in full compliance with the education requirements of this section.

(7) The provisions of this chapter governing procedures for suspension and revocation of licenses, payment and assessment of fees and governing misrepresentation, penalties and severability and other administrative procedures shall apply equally to permits for the practice of polysomnography related respiratory care services as to licenses for the practice of respiratory care.

(8) Conditional permit. Any individual who desires to provide polysomnography related respiratory care services as described in this chapter and who meets the requirements of subsection (2) of this section, as well as the necessary requirements as outlined below, may make application for a conditional permit as follows:

(a) An applicant for a conditional polysomnographic technologist permit must provide evidence satisfactory to the board of the successful completion of the certification examination as a registered polysomnographic technologist administered by the board of registered polysomnographic technologists (BRPT) or an equivalent examination, approved by the board, as recommended by the licensure board.

(b) An applicant for a conditional polysomnographic technician permit must provide evidence satisfactory to the board of the successful completion of a minimum of seven hundred twenty (720) hours of experience providing polysomnography services as a paid employee or contractor.

(c) An applicant for a conditional polysomnographic trainee permit must provide evidence satisfactory to the board of the successful completion of a minimum of three hundred sixty (360) hours of experience providing polysomnography services as a paid employee or contractor.

(d) Conditional permits referred shall be issued on or after January 1, 2004, and shall be issued until such time as the board may adopt rules as may be required for the issuance of regular permits as provided in subsections (3) through (7) of this section.

History.

I.C., § 54-4304A, as added by 2003, ch. 254,
§ 2, p. 655.

STATUTORY NOTES

Compiler's Notes.

The words and abbreviations enclosed in

parentheses so appeared in the law as enacted.

54-4305. Effective date — Licensure or temporary permit required beginning 1992. — The effective date of this chapter is July 1, 1991. The first year for which a license or a temporary permit shall be required for the practice or performance of respiratory care shall be calendar year 1992. All applications for initial licenses or temporary permits and for renewal of licenses or temporary permits under this chapter shall be made to the board upon a form provided by the board and all such applications

shall be in accordance with the rules and regulations promulgated by the board under the provisions of this chapter.

History.

I.C., § 54-4305, as added by 1991, ch. 294,
§ 1, p. 760.

54-4306. Requirements for licensure. — (1) A person practicing or performing respiratory care and who meets the requirements for licensure under the provisions of this section and who is not exempt from the requirements of this chapter pursuant to section 54-4308, Idaho Code, shall apply to the licensure board for the issuance of a license. The application shall be upon a form provided by the board.

(2) The board, upon recommendation of the licensure board, shall issue a license to an applicant if the applicant makes a satisfactory showing to the licensure board that:

- (a) the applicant is, on or before the date of the issuance of the license, eighteen (18) years of age or older; and
- (b) has not been convicted of a crime which would have a direct and adverse bearing on the applicant's ability to practice or perform respiratory care competently and in the best interests of the consuming public; and
- (c) is a high school graduate or has earned a general educational development certificate; and
- (d) has not been subjected to disciplinary action in any state or territory of the United States or in any foreign country arising from a showing of gross negligence or intentional misconduct directly related to the practice or provision of respiratory care; and
- (e) The applicant:
 - (i) has successfully completed the entry level examination and is a certified respiratory therapy technician and/or has successfully completed the written registry and clinical simulation examinations and is a registered respiratory therapist; or
 - (ii) is licensed as a respiratory care practitioner, or the equivalent in the discretion of the board, in another state, the District of Columbia, or in a territory of the United States; or
 - (iii) has, during the three (3) calendar years immediately preceding the effective date of this chapter, practiced respiratory care or provided respiratory care in this state under the supervision of licensed physicians for not fewer than three thousand (3,000) hours.

History.

I.C., § 54-4306, as added by 1991, ch. 294,
§ 1, p. 760.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this chapter" in paragraph (2)(e)(iii) refers to the effective

date of S.L. 1991, ch. 294, which was July 1, 1991.

54-4307. Temporary permit. — Any person who desires to practice or perform respiratory care but who does not meet the requirements for licensure under the provisions of this chapter and who is not exempt from the requirements of this chapter pursuant to section 54-4308, Idaho Code, shall apply for a temporary permit issued by the board. Upon issuance of a temporary permit such person shall be authorized to practice and perform respiratory care in the state under the supervision of a respiratory care practitioner or a licensed physician for a period of one (1) year from the date of issuance of the temporary permit. Temporary permits may be renewed one (1) time for a period of one (1) additional year upon application to the board.

The application for a temporary permit shall be on a form provided by the board and the applicant shall demonstrate to the satisfaction of the board that the applicant meets the requirements of subsection (2)(a), (b), (c) and (d) of section 54-4306, Idaho Code.

History.

I.C., § 54-4307, as added by 1991, ch. 294,
§ 1, p. 760.

54-4308. Exemptions. — (1) Nothing in this chapter shall be construed as preventing or restricting the practice or performance of respiratory care or requiring licensure or a temporary permit pursuant to this chapter:

(a) Of any person authorized in this state under any other law who carries out only those professional duties and functions for which such person has been specifically trained and for which professional designations are conferred; or

(b) Of certified pulmonary function technologists and registered pulmonary function technologists who carry out only those professional duties and functions for which such persons have been specifically trained and for which such professional designations are conferred; or

(c) Of any person employed as a respiratory therapist by the government of the United States or any agency thereof, if such person practices or provides respiratory care solely under the direction or control of the organization by which such person is employed; or

(d) Of any person actively pursuing in good faith a full-time supervised course of study leading to a degree or certificate in respiratory care in an American medical association accredited or approved educational program, or the equivalent as determined by the board, where the practice or provision of respiratory care by such person is supervised by a respiratory care practitioner or by a licensed physician; or

(e) For purposes of continuing education, consulting, and/or training, any person performing respiratory care in the state, if these services are performed for no more than thirty (30) days in a calendar year in association with a respiratory care practitioner licensed under this act or in association with a licensed physician, if:

- (i) The person is licensed as a respiratory care practitioner or the equivalent, as determined by the board, in good standing in another state or the District of Columbia, or in a territory of the United States; or
 - (ii) The person is a certified respiratory therapy technician (CRTT) or registered respiratory therapist (RRT).
- (f) Of any person who administers cardiopulmonary resuscitation (CPR) in an emergency situation.
- (2) A person claiming an exemption under subsection (1)(c) or (1)(e) of this section shall apply for a license or a temporary permit as provided for in this chapter in the event the facts upon which such claim for exemption is based change or cease to exist eliminating the grounds for such claim for exemption. Such application shall be filed with the board as soon as possible after the loss of the claim to exemption but no later than thirty (30) calendar days after the right to the exemption ceases. Such person may practice or perform respiratory care after the loss of such exemption and prior to application for and/or issuance by the board of a license or temporary permit only under the direct supervision of a respiratory care practitioner or a licensed physician.
- (3) A person claiming exemption under the provisions of subsection (1)(d) of this section shall cease to be eligible for such exemption if such person ceases to actively pursue the required course of study for a period of time in excess of one hundred twenty (120) consecutive calendar days and immediately upon receipt of the degree or certificate for which such person pursued the course of study.
- (4) The burden of proving the existence of facts entitling a person to an exemption under this section shall be upon the person claiming the exemption.
- (5) The provisions of this act shall not prohibit hospitals from employing individuals to provide respiratory care services who are exempt from the licensing requirements of this chapter. The provisions of this chapter shall not prohibit any hospital from training qualified personnel to provide respiratory care if the trainee would be exempt under subsection 1(a) or 1(d) of 54-4308, Idaho Code [this section], provided, that said training and respiratory care services are done under the supervision of a licensed physician or a respiratory care practitioner.

History.

I.C., § 54-4308, as added by 1991, ch. 294,
§ 1, p. 760.

STATUTORY NOTES**Compiler's Notes.**

The bracketed words "this section" in subsection (5) were inserted by the compiler to clarify the reference.

The term "this act," in paragraph (1)(e) and

subsection (5), refers to S.L. 1991, ch. 294, which is compiled as §§ 54-4301 to 54-4304 and 54-4305 to 54-4321.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

54-4309. Issuance of license or temporary permit. — The board

based upon recommendation of the licensure board shall issue a license or temporary permit to any person who meets the requirements of this chapter upon payment of the prescribed license or temporary permit fees. The board may, in its discretion, by rule or regulation, provide for the proration of fees charged in conjunction with the initial application by a person for a license or temporary permit if such license or temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in section 54-4310, Idaho Code.

History.

I.C., § 54-4309, as added by 1991, ch. 294,
§ 1, p. 760.

54-4310. Renewal of license or temporary permit. — (1) Any license or temporary permit issued under this chapter shall be subject to annual renewal and shall expire annually unless renewed in the manner prescribed by the rules of the board. The board may reinstate a license or temporary permit cancelled for failure to renew upon compliance with requirements of the board for renewal of licenses or temporary permits.

(2) Upon application, the board shall grant inactive status to the holder of a license who does not practice or provide respiratory care.

(3) Each individual applicant for renewal of an active license shall, on or before the expiration of the license, submit satisfactory proof to the licensing [licensure] board of successful completion of not less than twelve (12) classroom hours of approved course work in addition to any other requirements for renewal. The licensing [licensure] board may substitute all or a portion of the course work required in this section when a licensee shows evidence of passing an approved challenge exam or of completing equivalent education determined by the licensing [licensure] board to be in full compliance with the education requirements of this section.

History.

I.C., § 54-4310, as added by 1991, ch. 294,
§ 1, p. 760.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions in subsection (3) were added by the compiler to correct the name of the referenced board. See § 54-4313.

54-4311. Fees. — The board shall adopt rules and regulations establishing reasonable fees for the following:

(1) Initial license fee which may be prorated pursuant to section 54-4309, Idaho Code;

(2) Renewal of license fee;

(3) Inactive license fee;

(4) Initial temporary permit fee which may be prorated pursuant to section 54-4309, Idaho Code; and

(5) Temporary permit renewal fee.

Each applicant shall be responsible for the payment of any fee charged by the national board for respiratory care, inc., for the entry level examination

and the written registry and clinical simulation examinations. Fees authorized under this chapter shall be used solely to carry out the purposes of this chapter including the provisions of section 54-4317, Idaho Code.

History.

I.C., § 54-4311, as added by 1991, ch. 294,
§ 1, p. 760.

STATUTORY NOTES**Compiler's Notes.**

For more on the national board for respiratory care, inc., see <http://www.nbrc.org>.

54-4312. Suspension and revocation of license or temporary permit — Refusal to renew. — (1) Subject to the provisions of chapter 52, title 67, Idaho Code, the board, upon recommendation of the licensure board, may deny a license or temporary permit or refuse to renew a license or temporary permit, or may suspend or revoke a license or temporary permit or may impose probationary conditions if the holder of a license or temporary permit or applicant for license or temporary permit has been found guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes, but is not limited to:

- (a) obtaining a license or temporary permit by means of fraud, misrepresentation, or concealment of material facts;
- (b) being guilty of unprofessional conduct as defined by the rules established by the board, or violating the code of ethics adopted and published by the board;
- (c) being convicted of a crime which would have a direct and adverse bearing on the licensee's or temporary permit holder's ability to practice or perform respiratory care competently;
- (d) the unauthorized practice of medicine;
- (e) violating any provisions of this chapter or any of the rules and regulations promulgated by the board under the authority of this chapter;
- (f) being found mentally incompetent by a court of competent jurisdiction or being found mentally incompetent or unfit by the board to provide respiratory care.

(2) A denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license or temporary permit may be ordered by the board after a hearing in the manner provided by the rules adopted by the board. An application for reinstatement may be made to the board one (1) year from the date of the revocation of a license or temporary permit. The board shall hold a hearing to consider such reinstatement.

History.

I.C., § 54-4312, as added by 1991, ch. 294,
§ 1, p. 760.

54-4313. Licensure board. — (1) The licensure board shall consist of five (5) members appointed by the board, three (3) of whom shall be certified

respiratory care practitioners, one (1) of whom, in addition to being a licensed respiratory care practitioner, shall also be an Idaho permitted registered polysomnographic technologist, and all of whom shall be residents of Idaho at the time of their appointment and for their term of service. The persons appointed to the licensure board who are required to be licensed under this chapter shall have been engaged in rendering respiratory care services and polysomnography related respiratory care services, respectively, to the public, in teaching, or in research in respiratory care and polysomnography related respiratory care services, respectively, for at least five (5) years immediately preceding their appointments. These members shall at all times be holders of valid licenses for the practice of respiratory care in Idaho and one (1) such member shall be a holder of a valid Idaho permit as a registered polysomnographic technologist, except for the members of the first board, all of whom shall, at the time of appointment, hold the designation of certified respiratory therapy technician or registered respiratory therapist conferred by the national board for respiratory care, inc. (NBRC) and all of whom meet the requirements for licensure under the provisions of this chapter. The remaining two (2) members of the licensure board shall be members of health professions or members of the public with an interest in the rights of the consumers of health services.

(2) The board, within sixty (60) days following the effective date of this chapter, shall appoint two (2) licensure board members for a term of one (1) year; two (2) for a term of two (2) years; and one (1) for a term of three (3) years. Appointments made thereafter shall be for three (3) year terms, but no person shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed in this section.

(3) The two (2) members of the licensure board who shall be licensed respiratory care practitioners shall be selected by the board of medicine after considering a list of three (3) qualified applicants for each such vacancy submitted by the Idaho society of respiratory care or other interested associations. The member of the licensure board who shall be a licensed respiratory care practitioner and an Idaho permitted registered polysomnographic technologist shall be selected by the board of medicine after considering a list of three (3) qualified applicants submitted by the Idaho sleep disorder association or other interested associations. The remaining two (2) public members shall be selected by the board of medicine which may solicit nominations of qualified applicants submitted by the Idaho society for respiratory care, the Idaho sleep disorder association or other interested associations or individuals.

(4) The licensure board shall within sixty (60) days after the effective date of this chapter, and annually thereafter, hold a meeting and elect a chairman who shall preside at meetings of the licensure board. In the event the chairman is not present at any licensure board meeting, the licensure board may by majority vote of the members present appoint a temporary

chairman. A majority of the members of the licensure board shall constitute a quorum. Other meetings may be convened at the call of the chairman or the written request of any two (2) licensure board members.

(5) Each member of the licensure board shall be compensated as provided in section 59-509(n), Idaho Code.

History.

I.C., § 54-4313, as added by 1991, ch. 294,

§ 1, p. 760; am. 2003, ch. 254, § 3, p. 655; am. 2012, ch. 258, § 1, p. 718.

STATUTORY NOTES**Cross References.**

State board of medicine, § 54-1805.

Amendments.

The 2012 amendment, by ch. 258, substituted “section 59-905(n)” for “section 59-905(h)” in subsection (5).

Compiler’s Notes.

The phrase “effective date of this chapter”

in subsections (2) and (4) refers to the effective date of S.L. 1991, chapter 294, which was effective July 1, 1991.

For more on the national board for respiratory care, inc., see <http://www.nbrc.org>.

For more on the Idaho society for respiratory care, see <http://www.idascr.org>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

54-4314. Board of medicine and licensure board — Powers and duties. — (1) The board shall administer, coordinate and enforce the provisions of this chapter, evaluate the qualifications, and may issue subpoenas, examine witnesses, and administer oaths, and may investigate practices which are alleged to violate the provisions of this chapter. The licensure board shall review the applications of all applicants for licensure or temporary permits and make recommendations to and consult with the board concerning issuance of licenses or temporary permits, revocation of licenses or temporary permits and rules and regulations to be promulgated under this chapter.

(2) The licensure board shall hold meetings, conduct hearings and keep records and minutes as are necessary to carry out its functions.

History.

I.C., § 54-4314, as added by 1991, ch. 294, § 1, p. 760.

54-4315. Board of medicine — Administrative provisions. —

(1) The executive director of the Idaho state board of medicine shall serve as executive director of, but shall not be a member of, the licensure board.

(2) All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the state board of medicine account [fund] created in section 54-1809, Idaho Code, and all costs and expenses incurred by the board and licensure board under the provisions of this chapter shall be a charge against and paid from said account [fund] for such purposes, and the funds collected hereunder shall be immediately available for the administration of this chapter. In no instance shall the state board of medicine account [fund] be obligated to pay any claims which in aggregate with claims already allowed exceed the income to the state board of medicine account [fund] which has been derived from the application of this chapter.

(3) Money paid into the state board of medicine account [fund] pursuant to this chapter is hereby continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and licensure board in carrying out and enforcing the provisions of this chapter.

History.

I.C., § 54-4315, as added by 1991, ch. 294,
§ 1, p. 760.

STATUTORY NOTES**Cross References.**

Executive director of Idaho state board of
medicine, § 54-1806.

section were added by the compiler to correct
the name of the referenced account.

Compiler's Notes.

The bracketed insertions throughout the

54-4316. Rules and regulations. — The board shall, upon recommendation by the licensure board, adopt and promulgate rules and regulations necessary to carry out the provisions of this chapter, pursuant to chapter 52, title 67, Idaho Code.

History.

I.C., § 54-4316, as added by 1991, ch. 294,
§ 1, p. 760.

54-4317. Contracts for verification. — The board is authorized to enter into such contracts with the national board for respiratory care, inc. as may be necessary or advisable to provide for or to facilitate verification of any applicant's claim that such applicant has successfully completed the entry level examination and/or the written registry and clinical simulation examinations.

History.

I.C., § 54-4317, as added by 1991, ch. 294,
§ 1, p. 760.

STATUTORY NOTES**Compiler's Notes.**

For more on the national board for respiratory care, inc., see <http://www.nbrc.org>.

54-4318. Use or display of professional designations or credentials. — Nothing contained in this chapter shall preclude a respiratory care practitioner, a respiratory therapist exempt from licensure under this chapter or the holder of a temporary permit from using or displaying earned professional designations or credentials including, but not limited to, CRTT, RRT, CPFT and RPFT. A respiratory care practitioner may use and display the designation respiratory care practitioner or RCP in conjunction with the use or display of any such other earned professional designations or credentials.

A respiratory care practitioner who has earned the designation certified respiratory therapy technician or CRTT may also use or display the designation of certified respiratory care practitioner or CRCP.

A respiratory care practitioner who has earned the designation registered respiratory therapist or RRT may also use or display the designation of registered respiratory care practitioner or RRCP.

The holder of a temporary permit shall not use or display the designation certified respiratory care practitioner, CRCP; registered respiratory care practitioner, RRCP; or respiratory care practitioner, RCP; but may use or display any earned professional designations or credentials.

History.

I.C., § 54-4318, as added by 1991, ch. 294,
§ 1, p. 760.

54-4319. Misrepresentation — Consumer protection act. —

(1) The board may bring any action in the district court for a temporary restraining order, preliminary injunction or permanent injunction against any person who violates the provisions of this chapter or who falsely holds himself out as a respiratory care practitioner or against any person who practices or provides respiratory care in violation of this chapter.

(2) Any person who falsely holds himself out as a respiratory care practitioner shall be guilty of using a method, act or practice which is declared to be unlawful under chapter 6, title 48, Idaho Code, the Idaho consumer protection act.

History.

I.C., § 54-4319, as added by 1991, ch. 294,
§ 1, p. 760.

54-4320. Penalties. — Any person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor.

History.

I.C., § 54-4320, as added by 1991, ch. 294,
§ 1, p. 760.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none prescribed, § 18-113.

54-4321. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

History.

I.C., § 54-4321, as added by 1991, ch. 294,
§ 1, p. 760.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1991, ch.

294, which is compiled as §§ 54-4301 to 54-4304 and 54-4305 to 54-4321.

CHAPTER 44

PEER ASSISTANCE ENTITY AGREEMENTS

SECTION.

54-4401. Definitions.

54-4402. Agreements with peer assistance entities.

54-4403. Records and proceedings of peer assistance entities.

54-4404. Protected action and communication.

SECTION.

54-4405. Administrative rules.

54-4406. Referral in addition to or in lieu of discipline.

54-4407. Peer assistance entity to report to board.

54-4401. Definitions. — As used in this chapter:

(1) "Board" means:

(a) The state board of podiatry as established in chapter 6, title 54, Idaho Code;

(b) The state board of chiropractic physicians as established in chapter 7, title 54, Idaho Code;

(c) The state board of dentistry as established in chapter 9, title 54, Idaho Code;

(d) The state board of nursing as established in chapter 14, title 54, Idaho Code;

(e) The state board of optometry as established in chapter 15, title 54, Idaho Code;

(f) The state board of pharmacy as established in chapter 17, title 54, Idaho Code;

(g) The state board of medicine as established in chapter 18, title 54, Idaho Code;

(h) The board of veterinary medicine as established in chapter 21, title 54, Idaho Code;

(i) The Idaho state board of psychologist examiners as established in chapter 23, title 54, Idaho Code;

(j) The state board of social work examiners as established in chapter 32, title 54, Idaho Code;

(k) The Idaho state counselor licensing board [state licensing board of professional counselors and marriage and family therapists] as established in chapter 34, title 54, Idaho Code; and

(l) Any health care related board granted licensing authority by the legislature after July 1, 1993.

(2) "Peer assistance entity" means an organization, a program, a committee or a professional association which is designed to address any or all of the following issues affecting practitioners of the health care professions: chemical dependency and/or impairment; psychological impairment; and mental or physical impairment.

History.

I.C., § 54-4401, as added by 1993, ch. 73,
§ 1, p. 194.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertion in paragraph (1)(k)

was added by the compiler to correct the
name of the referenced board. See § 54-3403.

54-4402. Agreements with peer assistance entities. — (1) The board may enter into agreements with peer assistance entities to undertake those functions and responsibilities specified in the agreements which assist the board in performing its duties, implementing disciplinary actions or sanctions, and in addressing potential or confirmed problems of chemical dependency and/or impairment, psychological impairment, and mental or physical impairment affecting board licentiates.

(2) To fund the activities of a peer assistance entity as specified and undertaken under an agreement, the board may annually allocate to the entity a portion of each licentiate registration, certification or licensure fee, or any portion of additional funds available to the board from other sources.

(3) In addition to any other fees or professional dues imposed by the board, the board may make a peer assistance special assessment of not more than fifty dollars (\$50.00) per year to fund the activities of a peer assistance entity. If a board has a statutorily established limit on the amount of professional dues or fees it can assess its licensees, the peer assistance special assessment shall not be included in the total amount of professional dues or fees assessed by a board for such statutory limitation purposes.

(4) Pursuant to chapter 52, title 67, Idaho Code, the board may adopt rules and regulations necessary for the administration of a peer assistance entity program.

History.

I.C., § 54-4402, as added by 1993, ch. 73,
§ 1, p. 194.

54-4403. Records and proceedings of peer assistance entities. — Except as provided in sections 54-4406 and 54-4407, Idaho Code:

(1) The records and proceedings of a peer assistance entity which could be used to identify or provide information regarding individual past or present participants in a peer assistance entity program are not subject to subpoena or discovery and are not admissible as evidence in an administrative proceeding or a criminal or civil action.

(2) Members of the board of directors of a peer assistance entity, and employees, contractors and past or present participants in a peer assistance entity program may not be compelled to testify before any agency, board or court with respect to the peer assistance entity's records and proceedings regarding a past or current peer assistance entity program participant nor shall they disclose information or be examined regarding any past or current participant in a peer assistance entity program if that information was obtained as a result of performing duties within his regular scope of

functions for the peer assistance entity program, or as a program participant.

(3) Records regarding a participant shall be released if a properly completed release form signed by the participant is submitted.

History.

I.C., § 54-4403, as added by 1993, ch. 73,
§ 1, p. 194.

54-4404. Protected action and communication. — There shall be no liability on the part of and no action for damages against:

(1) Any board member, employee or contractor of a peer assistance entity for any action undertaken or performed by such person within the scope of the functions of such peer assistance entity under this chapter when acting without malice and in the reasonable belief that the action taken by him is warranted; or

(2) Any person providing information to the peer assistance entity without malice in the reasonable belief that such information is accurate.

History.

I.C., § 54-4404, as added by 1993, ch. 73,
§ 1, p. 194.

54-4405. Administrative rules. — Pursuant to the provisions of chapter 52, title 67, Idaho Code, the bureau of occupational licenses may promulgate such rules as are necessary to properly administer the addition of health care related boards as provided in section 54-4401, Idaho Code.

History.

I.C., § 54-4405, as added by 1993, ch. 73,
§ 1, p. 194.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

54-4406. Referral in addition to or in lieu of discipline. — (1) In addition to or in lieu of any disciplinary action, the board may refer a licensee who is chemically dependent or physically or psychologically impaired to a peer assistance entity.

(2) The peer assistance entity shall report to the board and provide all pertinent information concerning any licensee who is referred to the peer assistance entity under subsection (1) of this section.

History.

I.C., § 54-4406, as added by 1993, ch. 73,
§ 1, p. 194.

54-4407. Peer assistance entity to report to board. — (1) The legislature recognizes that confidentiality is essential to obtaining maximum disclosure from impaired health care professionals; such disclosure is

vital to the success of the peer assistance process. It is also recognized that the public must be protected from health care professionals who continue to practice in an impaired state.

(2) If the peer assistance entity reasonably believes that a health care professional continues to practice in an impaired state after entering into the peer assistance entity's program and despite the peer assistance entity's recommendations for treatment or modification of practice to remove risk to the public from the effects of the impairment, the peer assistance entity shall immediately notify the appropriate board regarding the impaired health care professional and provide all documentation relevant to substantiate the impaired practice. Similarly, if the licensing board reasonably believes that a health care professional continues to practice in an impaired state, it can require the peer assistance entity to provide all documentation available on the current ability to practice of the individual. Information that does not deal directly with the professional ability to practice will remain privileged.

(3) The board shall have access to financial and administrative records necessary to determine contract compliance and to reports regarding aggregate statistical information; provided, information released pursuant to this subsection shall not contain data which could be used to specifically identify past or present peer assistance program participants.

(4) The board shall have the authority to use any documentation or information supplied to it from a peer assistance entity pursuant to this section or section 54-4406, Idaho Code, as it deems necessary and which is consistent with applicable Idaho law.

(5) Nothing in this chapter shall be deemed to supersede any duty to report under chapter 19, title 6, or section 16-1605 or 16-1606, Idaho Code.

History.

I.C., § 54-4407, as added by 1993, ch. 73,
§ 1, p. 194; am. 2005, ch. 391, § 58, p. 1263.

CHAPTER 45

PUBLIC WORKS CONSTRUCTION MANAGEMENT LICENSING ACT

SECTION.

54-4501. Short title.
54-4502. Legislative intent.
54-4503. Definitions.
54-4504. License required.
54-4505. Requirements for licensure.
54-4506. Interim and temporary licenses.
54-4507. License renewal.
54-4508. Disciplinary proceedings.

SECTION.

54-4509. Certificates of authority for firms.
54-4510. Fees — Disposition of funds.
54-4511. Bidding of contracts — Dual capacity.
54-4512. Requirement of bond.
54-4513. Penalties.
54-4514. Injunctive relief.

54-4501. Short title. — The provisions of this chapter shall be known and may be cited as the "Public Works Construction Management Licensing Act of 1998."

History.

I.C., § 54-4501, as added by 1998, ch. 410,
§ 1, p. 1267.

STATUTORY NOTES**Compiler's Notes.**

Chapter 33 and 410 of S.L. 1998 each purported to enact a new chapter 45 in title 54. Accordingly, ch. 33 was provisionally codified

as title 54, chapter 46 and ch. 410 was codified as title 54, chapter 45. The redesignation of the sections enacted by S.L. 1998, ch. 33 was made permanent by S.L. 2005, ch. 25.

54-4502. Legislative intent. — In order to protect the public welfare and to promote the highest degree of professional conduct on the part of persons providing construction management services, the provisions of this chapter provide for the licensure of individuals and regulation of persons providing construction management services for public works projects.

History.

I.C., § 54-4502, as added by 1998, ch. 410,
§ 1, p. 1267.

54-4503. Definitions. — As used in this chapter:

(1) "Applicant" means an individual who applies for a license or interim license pursuant to the provisions of this chapter.

(2) "Board" means the public works contractors state license board [public works contractors license board] established in section 54-1905, Idaho Code.

(3) "Construction manager" means an individual who performs construction management services.

(4) "Construction management services" means representation of an owner in public works construction, as defined in section 54-1901(2)(c), Idaho Code, by a person with substantial discretion and authority to plan including scheduling, estimating and approval, coordinate, manage or direct phases of a project for the construction, demolition, alteration, repair or reconstruction of any public work. This definition shall not include general contracting services provided by public works contractors who actually perform the work of construction, alteration, repair or reconstruction. This definition shall not include services for which the laws of this state require a person to be licensed as an architect or registered as a professional engineer, nor shall it include services traditionally and customarily provided by licensed architects or registered professional engineers.

(5) "Firm" means any business organization, including individuals, partnerships, corporations, associations or any combination thereof acting as a unit.

(6) "Licensure" means the issuance of a license to an applicant under the provisions of this chapter authorizing such individual to offer and perform construction management services.

(7) "Person" includes an individual, partnership, corporation, association or other organization.

History.

I.C., § 54-4503, as added by 1998, ch. 410,
§ 1, p. 1267; am. 2005, ch. 213, § 33, p. 637.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection (2) was added by the compiler to correct the name of the referenced board. See § 54-3403.

54-4504. License required. — (1) Except as otherwise provided herein, on and after the effective date of this chapter, it shall be unlawful for any person to act as a construction manager in public works construction or to practice or perform or offer to perform construction management services in public works construction unless such construction management services are performed by or under the direct supervision of a licensed construction manager.

(2) Only an individual may be licensed as a construction manager. No firm may provide or hold itself out as providing construction management services unless it holds a certificate of authority issued by the board pursuant to section 54-4509, Idaho Code.

(3) Construction management services provided by a firm must be provided under the direct supervision and control of a licensed construction manager who is a principal or employee of the firm.

(4) An employee of an owner for which public works construction management services are to be performed shall not be required to obtain a license under this chapter in order to provide such services for his employer.

(5) A licensed architect, registered landscape architect or registered professional engineer shall not be required to obtain a license under this chapter in order to provide services for which the laws of this state require a person to be licensed as an architect, registered landscape architect or registered as a professional engineer or to provide services traditionally and customarily provided by licensed architects, registered landscape architects or registered professional engineers. Provided however, that such services shall not include the procurement of equipment or construction work required by law to be competitively bid for public works construction.

History.

I.C., § 54-4504, as added by 1998, ch. 410,
§ 1, p. 1267.

STATUTORY NOTES

Compiler's Notes.

The phrase "effective date of this chapter" in subsection (1) refers to the effective date of

S.L. 1998, ch. 410, which was effective July 1, 1998.

54-4505. Requirements for licensure. — (1) Any individual who wishes to become licensed as a construction manager shall make written application to the board on such forms or in such manner as the board may prescribe. Each applicant shall provide such proof as the board may require that he:

(a) Has a bachelor's degree in architecture, engineering or construction management from a college or university which has an educational program in architecture, engineering or construction management, as the case may be, accredited by a nationally recognized accrediting organiza-

tion and that he has a minimum of four (4) years' experience in managing construction projects; or

(b) Has a minimum of five (5) years' experience in managing construction projects.

(2) If the board finds that the applicant meets the requirements for licensure set forth in subsection (1) of this section, it shall administer an examination to the applicant, which examination shall be offered at least once each year. The examination shall test the applicant's knowledge and proficiency in construction management issues, including health, environmental and safety regulations, interpretation of construction contracts, financing, scheduling and project administration for construction projects. The board shall establish a fee for administering the examination to each applicant which must be paid before the applicant may sit for the examination.

(3) An applicant who demonstrates knowledge and proficiency of construction management by virtue of passing the examination, and upon the payment of an appropriate fee, shall be issued a license authorizing that individual to provide construction management services.

History.

I.C., § 54-4505, as added by 1998, ch. 410,
§ 1, p. 1267.

54-4506. Interim and temporary licenses. — (1) For a period of one (1) year following the effective date of this chapter, each applicant who meets the requirements of section 54-4505(1), Idaho Code, shall be issued an interim construction manager's license pursuant to such application terms and conditions as the board may require. At the conclusion of the one (1) year period, following the effective date of this chapter, such interim licenses shall expire and thereafter all licensed construction managers shall be required to meet the licensure requirements as set forth in section 54-4505, Idaho Code.

(2) The board may issue a temporary license for a period not to exceed one (1) year to an applicant who provides satisfactory proof of possession of a valid construction manager's license issued by another state pursuant to requirements substantially similar to those set forth in section 54-4505, Idaho Code.

(3) Interim and temporary licenses may not be renewed nor their terms extended beyond the period set forth in this section.

History.

I.C., § 54-4506, as added by 1998, ch. 410,
§ 1, p. 1267.

STATUTORY NOTES

Compiler's Notes.

The phrase "effective date of this chapter" in subsection (1) refers to the effective date of

S.L. 1998, ch. 410, which was effective July 1, 1998.

54-4507. License renewal. — (1) Each construction management li-

cense issued under the terms of this chapter shall expire and become invalid one (1) year after issuance unless renewed in the manner prescribed by the board.

(2) Upon application, the board may grant inactive status to the holder of a license who is no longer actively providing construction management services.

(3) The board may provide for reinstatement of an expired or inactive license upon such terms as it may determine by rule.

History.

I.C., § 54-4507, as added by 1998, ch. 410,
§ 1, p. 1267.

54-4508. Disciplinary proceedings. — (1) The board shall have the authority to deny or refuse to renew a license or certificate of authority, defer or precondition licensure, suspend or revoke a license, impose an administrative fine not to exceed twenty thousand dollars (\$20,000) per violation, impose the administrative costs of bringing the action before the board including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, or impose probationary conditions on the holder of a license or certificate of authority, upon the following grounds:

- (a) Fraud or deception in the procurement of a license or certificate of authority or in the taking of an examination required under the provisions of this chapter;
- (b) Incompetence in the performance of a construction manager's duties;
- (c) Holding oneself or one's firm out as a construction manager by engaging in any act meeting the definition or character of a construction manager as defined herein without a legally required license;
- (d) Fraud or deceit in the performance of a construction manager's duties; or
- (e) Willful violation of the provisions of this chapter or the rules promulgated by the board.

(2) Proceedings which may result in the suspension or revocation of a license or certificate of authority, or the imposition of probationary or other disciplinary conditions on the holder of a license or certificate of authority, shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code; provided however, that the suspension of a certificate of authority, upon the notification by its holder that the construction manager it has designated to the board no longer is a principal or employee of the firm, shall not be required to be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code.

(3) The board may, by rule, provide for the reinstatement of suspended or revoked licenses upon such terms as it may impose.

History.

I.C., § 54-4508, as added by 1998, ch. 410, § 1, p. 1267; am. 2000, ch. 318, § 3, p. 1073;
am. 2005, ch. 213, § 34, p. 637.

54-4509. Certificates of authority for firms. — (1) No firm shall

provide or hold itself out as providing construction management services unless it has a certificate of authority issued by the board. If one (1) or more principals or employees of a firm are licensed construction managers the firm may apply to the board for a certificate of authority to provide and hold itself out as providing construction management services. An application for a certificate of authority shall:

- (a) Designate the licensed construction manager or managers, who are principals or employees of the firm, specified to be in responsible charge of construction management services provided by the firm;
- (b) Be accompanied by a statement signed by such licensed construction manager or managers accepting the responsibility and duty to provide construction management services for the firm; and
- (c) Contain such other information as the board reasonably may require.

If the board concludes that the construction manager or managers designated by the firm is or are licensed in good standing and that the firm meets such other criteria reasonably established by the board, it shall issue a certificate of authority to the firm authorizing it to provide and hold itself out as providing construction management services.

(2) If the construction manager or managers designated by the firm cease to be licensed or to be principals or employees of the firm, the firm shall immediately notify the board in writing and shall cease to hold itself out as qualified to offer construction management services. Upon receiving such notification the board shall suspend the firm's certificate of authority. If the firm is in the process of providing construction management services when its designated licensed construction manager becomes unable to provide those services, the firm shall complete the construction management services for the project by using the services of another licensed construction manager who need not be a principal or employee of the firm. The firm shall not provide or hold itself out as providing construction management services for other projects until the board has reinstated the firm's certificate of authority which the board shall do if the firm submits an application for reinstatement of its certificate of authority, which shall contain the information required for an original application together with such other information as the board reasonably may require, and the board finds such application to be satisfactory and complete.

History.

I.C., § 54-4509, as added by 1998, ch. 410,
§ 1, p. 1267.

54-4510. Fees — Disposition of funds. — (1) The board shall adopt by rule reasonable fees not to exceed two hundred dollars (\$200) for each of the following:

- (a) Initial examination and licensing;
 - (b) License renewal;
 - (c) Inactive licenses;
 - (d) License reinstatement; and
 - (e) Issuance, suspension and reinstatement of a certificate of authority.
- (2) All fees collected by the board shall be paid to the public works

contractors license board and deposited in the state treasury, to the credit of the public works contractors license board fund [public works contractors license fund], and shall be used only for the administration of the provisions of this chapter. All expenses incurred pursuant to the provisions of this chapter shall be paid from the public works contractors license board fund [public works contractors license fund]. All fees collected by the board under the provisions of this chapter are hereby appropriated for one (1) year following the effective date of this chapter and thereafter as appropriated each year by the legislature for carrying out the purposes and objectives of this chapter and to pay all costs and expenses incurred in connection therewith. Such moneys shall be paid out on warrants drawn by the state controller upon presentation of proper vouchers approved by the board.

History.

I.C., § 54-4510, as added by 1998, ch. 410,
§ 1, p. 1267; am. 1999, ch. 272, § 1, p. 684.

STATUTORY NOTES**Cross References.**

State controller, § 67-1001 et seq.

S.L. 1998, ch. 410, which was effective July 1, 1998.

Compiler's Notes.

The phrase "effective date of this chapter" in subsection (2) refers to the effective date of

The bracketed insertions in subsection (2) were added by the compiler to correct the name of the referenced fund. See § 54-1921.

54-4511. Bidding of contracts — Dual capacity. — (1) In soliciting bids or awarding contracts for public works construction, a licensed construction manager shall comply with all notice and bidding laws with which an owner would be required to comply if it were to do the same activities without the assistance of a construction manager.

(2) A licensed construction manager and the firm of which he is a principal or employee shall not provide construction management services for a construction project on which the licensed construction manager or his firm also provides design services or other construction related services, whether as a contractor or subcontractor. Provided however, that this section shall not preclude a licensed architect or registered professional engineer from providing public works construction management services which are normally provided by licensed architects or registered professional engineers for a project on which the person or firm has provided design services. Such public works construction management services provided by a licensed architect or registered professional engineer shall not include the procurement of equipment or construction work required by law to be competitively bid for public works construction.

(3) No public entity shall enter into a contract with any person or firm for construction management services if such person or firm is required to be licensed under this chapter unless:

(a) Such person holds a valid license or such firm holds a valid certificate issued pursuant to this chapter; and

(b) The selection of such construction manager is made pursuant to section 67-2320, Idaho Code.

History.

I.C., § 54-4511, as added by 1998, ch. 410,
§ 1, p. 1267.

54-4512. Requirement of bond. — A licensed construction manager or firm providing public works construction management services shall be required to post a payment and performance bond or bonds in the amount of the total construction management contract to secure the construction manager’s obligations thereunder.

History.

I.C., § 54-4512, as added by 1998, ch. 410,
§ 1, p. 1267.

54-4513. Penalties. — Any person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment, at the discretion of the court.

History.

I.C., § 54-4513, as added by 1998, ch. 410,
§ 1, p. 1267; am. 2000, ch. 318, § 4, p. 1073.

54-4514. Injunctive relief. — The board may bring an action in the district court for a temporary restraining order, preliminary injunction or permanent injunction against any person who violates the provisions of this chapter.

History.

I.C., § 54-4514, as added by 1998, ch. 410,
§ 1, p. 1267.

CHAPTER 46
PATIENT FREEDOM OF INFORMATION

SECTION.

- 54-4601. Declaration of purpose.
- 54-4602. Definitions.
- 54-4603. Patient access to provider information.

SECTION.

- 54-4604. Information and access to provider profile information.

54-4601. Declaration of purpose. — In recognition of the importance of health care to all Idahoans, it is the intent of the legislature to provide patients with easily accessible profile information on specified licensed or registered health care professionals. By creating a database of individual profiles that the public may access, patients will be able to make more informed decisions about whom they wish to engage when in need of health care services. The database should include educational background and work history, disclosure of any final board disciplinary actions, criminal convictions, malpractice history, and other pertinent information as required by this chapter. The following licensed and registered professional

health care providers are subject to this chapter: physicians and surgeons and osteopathic physicians and surgeons, physical therapists, dentists, podiatrists, chiropractors, optometric physicians, psychologists, physicians' assistants, nurse practitioners, and certified registered nurse anesthetists.

History.

I.C., § 54-4501, as added by 1998, ch. 33, § 1, p. 150; am. and redesign. 2005, ch. 25, § 106, p. 82.

STATUTORY NOTES**Compiler's Notes.**

Chapters 33 and 410 of S.L. 1998 each purported to enact a new chapter 45 in title 54. Accordingly, ch. 33 was provisionally codified as title 54, chapter 46 and ch. 410 was

codified as title 54, chapter 45. The redesignation of the sections enacted by S.L. 1998, ch. 33 was made permanent by S.L. 2005, ch. 25.

RESEARCH REFERENCES

A.L.R. — What constitutes “agency” for purposes of Freedom of Information Act (5 U.S.C. § 552). 165 A.L.R. Fed. 591.

54-4602. Definitions. — As used in this chapter, the following terms have the following meanings:

(1) “Board” means the professional licensing and registration board, respectively, for each of the named providers.

(2) “Patient” means all past, current or future consumers of health care services.

(3) “Provider(s)” means the following licensed or registered professional health care providers: podiatrists licensed pursuant to chapter 6, title 54, Idaho Code; chiropractors licensed pursuant to chapter 7, title 54, Idaho Code; dentists licensed pursuant to chapter 9, title 54, Idaho Code; advanced practice professional nurses to include certified nurse-midwives, clinical nurse specialists, nurse practitioners and certified registered nurse anesthetists licensed or registered pursuant to chapter 14, title 54, Idaho Code; optometric physicians licensed pursuant to chapter 15, title 54, Idaho Code; physicians and surgeons and osteopathic physicians and surgeons, licensed pursuant to chapter 18, title 54, Idaho Code; physicians' assistants registered pursuant to chapter 18, title 54, Idaho Code; physical therapists registered pursuant to chapter 22, title 54, Idaho Code; and psychologists licensed pursuant to chapter 23, title 54, Idaho Code.

History.

I.C., § 54-4502, as added by 1998, ch. 33, § 1, p. 150; am. and redesign. 1999, ch. 119, § 1, p. 354.

STATUTORY NOTES**Compiler's Notes.**

This section was enacted as § 54-4502 by S.L. 1998, ch. 33, § 1, p. 150; however, § 1 of S.L. 1999, ch. 119 amended the section as § 54-4602.

Effective Dates.

Section 3 of S.L. 1999, ch. 119 declared an emergency. Approved March 18, 1999.

54-4603. Patient access to provider information. — (1) Each person who applies for initial licensure or registration as a provider must, at the time of licensure or registration, and each provider who applies for license or registration renewal must, in conjunction with the renewal of a license or registration, and under procedures which shall be adopted by the board, and in addition to any other information that may be required from the applicant, furnish the following information to the board:

- (a) Names and addresses of medical/professional schools or other institutions of higher learning that provider attended, including any graduate education, and dates of graduation;
- (b) Speciality certifications that are recognized by the board;
- (c) Appointments to faculty of any medical/professional school and indication whether provider has had a responsibility for graduate education within the most recent ten (10) years (optional);
- (d) Location and type of practice for the most recent ten (10) years;
- (e) Current location of provider's primary practice setting, and if more than one (1) setting, the approximate percentage of time spent at each location;
- (f) The hospital(s) that serves as the provider's primary admitting facility and at which the provider has active clinical privileges in good standing;
- (g) Disclosure of whether the provider participates in medicaid and medicare programs (but not necessarily accepting new patients), or has ever been barred from participation in either program;
- (h) Disclosure of any translating services that may be available at the provider's practice location(s) (optional);
- (i) Description of any criminal convictions for felonies or other crimes of moral turpitude within the most recent ten (10) years. For purposes of this subsection, a person shall be deemed convicted of a crime if he pled guilty or if he was found or adjudged guilty by a court of competent jurisdiction;
- (j) Description of any final board disciplinary actions within the most recent ten (10) years that are considered to be public in accordance with the provisions of chapter 3, title 9, Idaho Code;
- (k) Description of any final disciplinary actions by a board from any other state including, but not limited to, revocation or suspension of license, within the most recent ten (10) years;
- (l) Description of revocation or involuntary restriction of hospital privileges, or a reduction in credentialing for more than one hundred eighty (180) days, from any state, for reasons related to competence or character, that have been taken by a hospital's governing body or any other official of a hospital after procedural due process has been afforded; or the resignation from or nonrenewal of a medical staff membership, or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital, within the most recent ten (10) years;
- (m) Whether the provider carries professional malpractice insurance, and if not, has ever been denied malpractice insurance;
- (n) Disclosure of all malpractice court judgments and all malpractice arbitration awards in which a payment was awarded to a complaining

party during the most recent ten (10) years. Pending malpractice claims shall not be disclosed by the board to patients; however, nothing herein shall be construed to prevent the board from investigating and disciplining a provider on the basis of pending malpractice claims.

(o) Disclosure of settlements of professional malpractice claims within the most recent five (5) years of continuous practice;

(i) Providers need only disclose malpractice settlements if there have been five (5) or more settlements in the most recent five (5) years of continuous practice, of fifty thousand dollars (\$50,000), or more, per settlement, or if there have been more than ten (10) settlements within the most recent five (5) years of continuous practice of any dollar amount;

(ii) Settlements that result solely in an adjustment to the fee charged for a provider's services shall not be disclosed pursuant to this chapter;

(iii) Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of a provider. A payment in settlement of a malpractice action or claim should not be construed as creating presumption that malpractice has occurred. Malpractice histories tend to vary by speciality. Some specialities are more likely than others to be the subject of litigation.";

(iv) Nothing herein shall be construed to limit or prevent the board from providing further explanatory information regarding settlements;

(p) Percentage of ownership interest provider has in other health facilities, laboratories, equipment or therapy, except for ownership interest in the primary practice business, to which the provider's patients are, have been, or may be referred.

(2) Each profile submitted by a provider must include a statement, signed under oath, by the provider attesting to the correctness and completeness of the information contained in the profile.

(3) The board shall not be held liable for the correctness or completeness of the information contained in the provider profiles, and shall include a disclaimer statement on all released profiles, attesting to the self-reporting nature of the program, and that the information has not been verified by the board.

(4) The board shall, at the time of issuing a new license or registration, or in conjunction with license or registration renewal, collect and maintain the information required in this chapter, as submitted by the provider, for the purpose of creating individual profiles on providers that shall be made available to the public as provided in this chapter.

(5) No state law that would otherwise prohibit, limit, or penalize disclosure of information about a provider shall apply to disclosure of information required by this chapter.

(6) If a provider fails to comply with the provisions of this chapter with full and truthful disclosure of information to the board within the time specified by the board, the board may:

(a) Fine the provider up to fifty dollars (\$50.00) for each day that the provider is not in compliance with the provisions of this chapter;

(b) Take any other disciplinary action it deems appropriate, except the board may not revoke, suspend, refuse to issue or refuse to renew a provider’s license or registration solely because the provider failed to comply with the provisions of this chapter.

History. § 1, p. 150; am. and redesign. 1999, ch. 119, I.C., § 54-4503, as added by 1998, ch. 33, § 2, p. 354.

STATUTORY NOTES

Compiler’s Notes.
This section was enacted as § 54-4503 by S.L. 1998, ch. 33, § 1, p. 1509; however, § 2 of S.L. 1999, ch. 119 amended the section as § 54-4603.
The letter “s” and words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.
Section 3 of S.L. 1999, ch. 119 declared an emergency. Approved March 18, 1999.

54-4604. Information and access to provider profile information.

— The boards and providers subject to the provisions of this chapter shall inform the public that provider profile information is available and make the information available upon request.

The boards and providers shall fully implement the provisions of this chapter no later than January 1, 2000.

The boards and providers shall be responsible for promoting public awareness of and access to provider profiles as provided in this chapter, which shall include the creation of printed materials and signs to be available in board and provider offices. Profile information on individual providers shall be available at the office(s) of the provider, and their respective board, in written form, upon request, and electronically where available, and shall be considered public information.

History. § 1, p. 150; am. and redesign. 2005, ch. 25, I.C., § 54-4504, as added by 1998, ch. 33, § 107, p. 82.

STATUTORY NOTES

Compiler’s Notes.
The letter “s” enclosed in parentheses so appeared in the law as enacted.

CHAPTER 47

ACUPUNCTURE

- SECTION.
- 54-4701. Purpose.
 - 54-4702. Definitions.
 - 54-4703. License required.
 - 54-4704. Board of acupuncture created — Appointment — Terms.
 - 54-4705. Board of acupuncture — Powers and duties — Funds.
 - 54-4706. Requirements for licensure.

- SECTION.
- 54-4707. Requirements for certification.
 - 54-4708. Acupuncture trainee permit.
 - 54-4708A. Acupuncture technician.
 - 54-4709. Waiver of requirements.
 - 54-4710. Expiration and renewal — Reinstatement.
 - 54-4711. Suspension and revocation.
 - 54-4712. Titles.

SECTION.

54-4713. Penalties.

54-4701. Purpose. — The legislature finds and declares that the provision of acupuncture services affects the public health, safety and welfare. The legislature further finds that it is in the public interest to aid in the provision of acupuncture services of high quality to the people of Idaho. To aid in fulfilling these purposes, this chapter provides for the licensure and regulation of acupuncturists within the state of Idaho.

History.

I.C., § 54-4701, as added by 1999, ch. 379,
§ 1, p. 1039.

54-4702. Definitions. — As used in this chapter:

(1) “Acupuncture” means that theory of health care developed from traditional and modern Oriental medical philosophies that employs diagnosis and treatment of conditions of the human body based upon stimulation of specific acupuncture points on meridians of the human body for the promotion, maintenance, and restoration of health and for the prevention of disease. Therapies within the scope of acupuncture include manual, mechanical, thermal, electrical and electromagnetic treatment of such specific indicated points. Adjunctive therapies included in, but not exclusive to, acupuncture include herbal and nutritional treatments, therapeutic exercise and other therapies based on traditional and modern Oriental medical theory.

(2) “Board” means the Idaho state board of acupuncture.

(3) “NCCAOM” means “National Certification Commission for Acupuncture and Oriental Medicine.”

(4) “Practice of acupuncture” means the insertion of acupuncture needles and use of similar devices and therapies, including application of moxibustion, to specific indicated points on the skin of the human body as indicated pursuant to traditional and modern theories of Oriental medicine. The “practice of acupuncture” does not include:

(a) surgery; or

(b) prescribing, dispensing or administering any prescription drug or legend drug as defined in section 54-1705(31), Idaho Code.

History.

I.C., § 54-4702, as added by 1999, ch. 379,
§ 1, p. 1039; am. 2002, ch. 26, § 2, p. 29; am.

2006, ch. 290, § 4, p. 888; am. 2009, ch. 244,
§ 6, p. 748; am. 2011, ch. 135, § 6, p. 375.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 290, updated the section reference in (4)(b).

The 2009 amendment, by ch. 244, substituted “54-1705(30)” for “54-1705(28)” in subsection (4)(b).

The 2011 amendment, by ch. 135, updated

the section reference in paragraph (4)(b) in light of the 2011 amendment to § 54-1705.

Compiler’s Notes.

For more on the national certification commission for acupuncture and oriental medicine, see <http://www.nccaom.org>.

Effective Dates.

Section 6 of S.L. 2006, ch. 290 declared an emergency. Approved March 31, 2006.

54-4703. License required. — (1) From and after the 1st day of July, 1999, it is unlawful for any person to practice acupuncture in this state without, at such time being licensed or certified pursuant to this chapter; provided however, the provisions of this chapter shall not apply to persons licensed pursuant to chapter 18, title 54, Idaho Code, but such persons may seek licensure or certification pursuant to this chapter on a voluntary basis. Persons holding an acupuncture trainee permit pursuant to this chapter may practice acupuncture on a supervised, limited basis as prescribed by this chapter, the board's rules and the permit.

(2) No person shall use any title, designation, words, letters, abbreviations, or sign, card or device which indicates to the public that such person may practice acupuncture in any form or has been issued a license or been certified pursuant to this chapter unless the person is so licensed or certified, has been issued such license or certification, and the license or certification is in good standing pursuant to rules of the board.

History.

I.C., § 54-4703, as added by 1999, ch. 379, § 1, p. 1039; am. 2007, ch. 220, § 1, p. 661; am. 2011, ch. 75, § 1, p. 157.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 220, deleted subsections (3) and (4), regarding persons who meet NCCAOM eligibility criteria for certification and persons who meet the requirements for full or associate membership

of the American academy of medical acupuncture or for fellowship of the international academy of medical acupuncture, inc., respectively.

The 2011 amendment, by ch. 75, added the last sentence in subsection (1).

54-4704. Board of acupuncture created — Appointment — Terms.

— (1) There is hereby established in the department of self-governing agencies a state board of acupuncture and the members thereof shall be appointed by the governor within sixty (60) days following the effective date of this chapter.

(2) The board shall consist of five (5) members, three (3) of whom shall be licensed pursuant to this chapter, one (1) of whom shall be certified pursuant to this chapter, and one (1) of whom shall be a member of the public with an interest in the rights of the consumers of acupuncture services.

(3) In making appointments to the board of acupuncture, consideration shall be given to recommendations made by the Idaho acupuncture association, other similar professional organizations and individual acupuncturists and physicians.

(4) All members of the board shall be current residents of the state of Idaho and have been residents of the state of Idaho for a minimum of three (3) years immediately preceding appointment.

(5) The initial three (3) licensed acupuncturist members of the board shall be persons who are eligible to become licensed pursuant to this chapter, and who shall, within thirty (30) days of their appointment, become

licensed pursuant to this chapter. The certified acupuncturist member shall be a person with sufficient qualification to be eligible for certification pursuant to this chapter and shall, within thirty (30) days of appointment, become certified.

(6) The initial board shall be appointed for staggered terms, the longer of which shall not exceed four (4) years. After the initial appointments, all terms shall be four (4) years, and a member may be reappointed. In the event of death, resignation, or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(7) The governor may remove any member of the board for cause, prior to the expiration of the member's term.

(8) The board shall, within thirty (30) days after its appointment, and at least annually thereafter, hold a meeting and elect a chairman. The board may hold additional meetings on the call of the chairman or at the written request of any two (2) members of the board. The board may appoint such committees as it considers necessary to carry out its duties. A majority of the members of the board shall constitute a quorum.

(9) Each member of the board shall be compensated as provided in section 59-509(n), Idaho Code.

History.

I.C., § 54-4704, as added by 1999, ch. 379,
§ 1, p. 1039; am. 2000, ch. 82, § 1, p. 170.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

The phrase "effective date of this chapter" in subsection (1) refers to the effective date of S.L. 1999, ch. 379, which was July 1, 1999.

Compiler's Notes.

For more on the Idaho acupuncture association, see <http://idahoaacupuncture.org>.

54-4705. Board of acupuncture — Powers and duties — Funds. —

(1) The board shall have the authority to:

(a) Determine the qualifications of persons applying for licensure, certification and acupuncture trainee permits pursuant to this chapter and define, by rule, the appropriate scope of acupuncture services that may be rendered to the public in this state;

(b) Hire or appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners;

(c) Establish, pursuant to the administrative procedure act, such rules as are necessary for the administration of this chapter, including standards for professional conduct that reflect current practice standards and promote inclusion of innovations and advances in acupuncture;

(d) Conduct investigations and examinations and hold hearings;

(e) Collect fees and other funds as prescribed by this chapter;

(f) Contract, sue and be sued, and pursue other matters lawful in this state;

(g) Provide such other services and perform such other functions as are necessary and desirable to fulfill its purposes;

(h) Adopt rules requiring continuing education as a condition of continued licensure or certification.

(2) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account].

History.

I.C., § 54-4705, as added by 1999, ch. 379, § 1, p. 1039; am. 2000, ch. 28, § 2, p. 54; am.

2002, ch. 81, § 1, p. 184; am. 2011, ch. 75, § 2, p. 157.

STATUTORY NOTES

Cross References.

Administrative procedure act, § 67-5201 et seq.

Amendments.

The 2011 amendment, by ch. 75, substituted “trainee permits” for “technician certificates” in paragraph (1)(a) and added “or certification” at the end of paragraph (1)(h).

Compiler’s Notes.

The bracketed insertions in subsection (2) were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 3 of S.L. 2000, ch. 28 declared an emergency. Approved March 3, 2000.

54-4706. Requirements for licensure. — A person applying for a license shall, in addition to paying all required fees, submit a written application provided by the board showing to the satisfaction of the board that such person meets the following requirements:

(1) Has received certification from NCCAOM, or has successfully completed other similar requirements as have been approved by the board; and

(2) Has successfully completed an acupuncture internship or pre-professional practice program, coordinated program, or such other equivalent experience as may be approved by the board; and

(3) Has passed an examination or other demonstration of proficiency as may be uniformly required by the board for other similarly qualified applicants for licensure.

History.

I.C., § 54-4706, as added by 1999, ch. 379, § 1, p. 1039; am. 2002, ch. 81, § 2, p. 184.

STATUTORY NOTES

Compiler’s Notes.

For more on the national certification com-

mission for acupuncture and oriental medicine, see <http://www.nccaom.org>.

54-4707. Requirements for certification. — A person applying for a certification shall, in addition to paying all required fees, submit a written application provided by the board showing that such person has successfully passed an examination or other demonstration of proficiency as may be uniformly required by the board and:

- (1) Has successfully completed the requirements for full membership in the American academy of medical acupuncture; or
- (2) Has met each of the following education and experience requirements:
 - (a) Possesses from an accredited college or university a doctoral degree in chiropractic, dentistry, podiatric medicine, or naturopathic medicine;
 - (b) Has successfully completed an approved program consisting of a minimum of one hundred (100) hours of on-site didactic coursework in acupuncture taught by an NCCAOM certified acupuncturist who has been practicing acupuncture for at least five (5) years and is currently licensed, two hundred (200) hours of practice as a certified technician or as an acupuncture trainee over a one (1) year period and twenty-five (25) case studies; and
 - (c) Has successfully passed a blood-borne pathogen course and comprehensive examination concerning the practice of acupuncture approved by the board that incorporates clean needle techniques and OSHA procedures and requirements.

History.

I.C., § 54-4707, as added by 1999, ch. 379, § 1, p. 1039; am. 2007, ch. 220, § 2, p. 661; am. 2011, ch. 75, § 3, p. 157.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 220, in the introductory paragraph, deleted “to the satisfaction of the board” following “showing,” and substituted the language beginning “has successfully passed an examination” for “meets the following requirements”; in subsection (1), deleted “fellowship in the international academy of medical acupuncture, inc., or such other comparable requirements as have been approved by the board” from the end, and substituted “;or” for “;and”; rewrote the introductory paragraph in subsection (2), which formerly read: “Has passed an examination or other demonstration of proficiency as may be uniformly required by the board for other similarly qualified applicants for certifica-

tion”; and added subsections (2)(a) through (2)(c).

The 2011 amendment, by ch. 75, in paragraph (2)(b), inserted “in acupuncture taught by an NCCAOM certified acupuncturist who has been practicing acupuncture for at least five (5) years and is currently licensed” near the middle and inserted “or as an acupuncture trainee” near the end.

Compiler’s Notes.

For more on the national certification commission for acupuncture and oriental medicine, see <http://www.nccaom.org>.

For more on the American academy of medical acupuncture, see <http://medicalacupuncture.org>.

54-4708. Acupuncture trainee permit. — (1) A person seeking the experience needed to obtain licensure or certification pursuant to this chapter may apply for an acupuncture trainee permit. Such person shall pay all required fees, submit a written application provided by the board and show to the satisfaction of the board that such person is qualified and actively pursuing an acupuncture license or certification.

(2) In approving an acupuncture trainee permit the board shall consider the scope and extent of the applicant’s academic and other training and experience in health care to date and may, for each individual acupuncture trainee:

- (a) Require such supervision, as the board may deem appropriate, by a person licensed or certified pursuant to this chapter;

(b) Restrict the practice of acupuncture for the acupuncture trainee to specified therapies or treatments.

(3) A person's acupuncture trainee permit expires one (1) year from the date of issuance. However, the board may renew the permit for up to one (1) year if, before the permit expires, the person asks the board for an extension and establishes to the board's satisfaction that good cause exists for the board to renew the permit. The renewal of any acupuncture trainee permit may be upon such conditions as the board may require. The board may not renew a permit more than once and the board may not issue more than one (1) permit to any person.

History.

I.C., § 54-4708, as added by 1999, ch. 379, § 1, p. 1039; am. 2002, ch. 81, § 3, p. 184; am. 2011, ch. 75, § 4, p. 157.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 75, rewrote the section to the extent that a detailed comparison is impracticable.

54-4708A. Acupuncture technician. — Individuals who have been granted an acupuncture technician certificate before July 1, 2011, shall be entitled to retain and renew such certificate under the renewal terms as provided in section 54-4710, Idaho Code, and the board's rules, but no new technician certificates shall be issued on and after July 1, 2011.

History.

I.C., § 54-4708A, as added by 2011, ch. 75, § 5, p. 157.

54-4709. Waiver of requirements. — The board may waive the requirements of section 54-4706, Idaho Code, and grant a license to any applicant who shall present proof of current licensure to engage in the practice of acupuncture in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure pursuant to this chapter.

History.

I.C., § 54-4709, as added by 1999, ch. 379, § 1, p. 1039.

54-4710. Expiration and renewal — Reinstatement. — (1) All licenses and certifications issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) The board shall establish the following fees relating to licensing, which fees shall be established in an amount that is sufficient to defray all costs necessary for the administration of this chapter:

(a) Initial license;

- (b) Renewal of license fee;
- (c) Initial fee for certification;
- (d) Initial acupuncture trainee permit;
- (e) Renewal acupuncture technician certificate or acupuncture trainee permit;
- (f) Inactive license and certification fees;
- (g) Late renewal fees.

History.

I.C., § 54-4710, as added by 1999, ch. 379, § 1, p. 1039; am. 2003, ch. 21, § 21, p. 77; am. 2011, ch. 75, § 6, p. 157.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 75, substituted "trainee permit" for "technician certi-

cate" at the end of paragraph (2)(d) and added "or acupuncture trainee permit" at the end of paragraph (2)(e).

54-4711. Suspension and revocation. — To protect the health, safety and welfare of the public, the board, in accordance with the requirements of chapter 52, title 67, Idaho Code, may refuse to issue or may refuse to renew a license, certification or permit, or may suspend or revoke a license, certification or permit, under such conditions as the board may require, if the applicant or holder of the license, certification or permit has:

- (1) Been convicted of a felonious act, or crime involving moral turpitude;
- (2) Obtained or attempted to obtain the issuance or renewal of a license, certification or permit pursuant to this chapter by means of fraud, misrepresentation or concealment of material facts;
- (3) Engaged in the practice of acupuncture in a manner which does not meet the generally accepted standards for the practice of acupuncture within the state of Idaho;
- (4) Failed to maintain the confidentiality of records or other information pertaining to an identifiable client, except as required or authorized by law;
- (5) Engaged in any conduct that constitutes an abuse or exploitation of a client arising out of the trust and confidence placed in the acupuncturist by the client;
- (6) Engaged in conduct that violates the provisions of this chapter, the rules of the board or the terms of any permit issued by the board; or
- (7) Failed to comply with a board order entered in a disciplinary matter.

History.

I.C., § 54-4711, as added by 1999, ch. 379, § 1, p. 1039; am. 2007, ch. 220, § 3, p. 661; am. 2011, ch. 75, § 7, p. 157.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 220, added subsection (6).

The 2011 amendment, by ch. 75, in the introductory paragraph, substituted "may refuse to issue or may refuse to renew" for "may refuse to issue a license or certification, refuse to renew", substituted "license, certification or permit" for "license or certification" twice,

substituted "board may require" for "board may determine", and substituted "license, certification or permit has" for "license or certification"; deleted "Has" from the beginning of subsection (1); substituted "Obtained or attempted to obtain the issuance or renewal of a license, certification or permit" for "Obtained a license or permit" at the beginning of subsection (2); substituted "Engaged" for "Endan-

gered the health of any person engaging” at the beginning of subsection (3); deleted “Has” from the beginning of subsection (4); rewrote subsection (6), which formerly read: “Has engaged in conduct that violates this chapter or rules of the board”; and added subsection (7).

54-4712. Titles. — Persons licensed pursuant to this chapter may use the title “licensed acupuncturist.” Persons certified or granted an acupuncture technician certificate, or an acupuncture trainee permit pursuant to this chapter, may use the title “certified acupuncturist,” “acupuncture technician” or “acupuncture trainee,” respectively, but may not use the title “licensed acupuncturist” or “doctor,” or any abbreviation thereof, unless the acupuncturist is otherwise authorized to use such title. No person authorized to practice acupuncture pursuant to this chapter may hold himself out in any way as a medical physician, doctor of osteopathy, chiropractor, physical therapist or other health care professional unless the person is properly authorized for such practice pursuant to law.

History.
I.C., § 54-4712, as added by 1999, ch. 379,
§ 1, p. 1039; am. 2011, ch. 75, § 8, p. 157.

STATUTORY NOTES

Amendments. “or an acupuncture trainee permit” and “or ‘acupuncture trainee’” in the first sentence.
The 2011 amendment, by ch. 75, inserted

54-4713. Penalties. — (1) A person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor.
(2) The board may seek injunction against any person who practices acupuncture in violation of this chapter and may, in the event a permanent injunction is entered against such person or plea or verdict of guilty is entered in any criminal matter, impose a civil penalty in the amount of all costs and fees incurred by the board in prosecuting the matter.
(3) The representation to another person that a person holds a license, certification or permit pursuant to this chapter, when such representation is untrue, constitutes the using of a method, act or practice which is declared to be unlawful under the provisions of chapter 6, title 48, Idaho Code.

History.
I.C., § 54-4713, as added by 1999, ch. 379,
§ 1, p. 1039; am. 2011, ch. 75, § 9, p. 157.

STATUTORY NOTES

Cross References. tuted “person holds a license, certification or permit” for “person is licensed or holds certification” in subsection (3).
Penalty for misdemeanor where none prescribed, § 18-113.

Amendments.
The 2011 amendment, by ch. 75, substi-

CHAPTER 48

UNIFORM ATHLETE AGENTS ACT

SECTION.

- 54-4801. Short title.
 54-4802. Definitions.
 54-4803. Administration — Service of process — Subpoenas.
 54-4804. Athlete agents — Registration required — Void contracts.
 54-4805. Registration as athlete agent — Form — Requirements.
 54-4806. Certificate of registration — Issuance or denial — Renewal.
 54-4807. Suspension, revocation or refusal to renew registration.
 54-4808. Temporary registration.
 54-4809. Registration and renewal fees — Deposit — Appropriation.

SECTION.

- 54-4810. Required form of contract.
 54-4811. Notice to educational institution.
 54-4812. Student-athlete's right to cancel.
 54-4813. Required records.
 54-4814. Prohibited conduct.
 54-4815. Criminal penalties.
 54-4816. Civil remedies.
 54-4817. Administrative penalty.
 54-4818. Uniformity of application and construction.
 54-4819. Electronic signatures in global and national commerce act.
 54-4820. Severability.

54-4801. Short title. — This chapter may be cited as the “Uniform Athlete Agents Act.”

History.

I.C., § 54-4801, as added by 2001, ch. 202,
 § 1, p. 681.

STATUTORY NOTES**Effective Dates.**

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

The title Uniform Athlete Agents Act was selected because a majority of the existing

acts regulating the activities of agents representing athletes have similar titles.

54-4802. Definitions. — As used in this chapter:

(1) “Agency contract” means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional sports services contract or an endorsement contract.

(2) “Athlete agent” means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) “Contact” means a communication, direct or indirect, between an

athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) “Endorsement contract” means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following or fame obtained because of athletic ability or performance.

(6) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency or instrumentality, public corporation or any other legal or commercial entity.

(8) “Professional sports services contract” means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) “Registration” means registration as an athlete agent pursuant to this chapter.

(11) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(12) “Student-athlete” means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

History.

I.C., § 54-4802, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

Only individuals are within the definition of “athlete agent” and therefore required to register under section 5. Corporations and other business entities do not come within the definition of “athlete agent” and therefore are not required to register under the act, even though individuals employed by the corporation or other business entity as athlete agents

would be required to register. The definition also includes other individuals or “runners” used by an agent to recruit or solicit a student-athlete to enter into an agency contract. Attorneys are not excluded from the definition. An attorney does not need to comply with the provisions of this act in order to provide legal services to a student-athlete,

but is required to register to perform the services of an athlete agent.

Representatives of "professional sports teams or professional sports organizations," such as baseball teams, are excluded from the definition of "athlete agent" as long as they are acting for their teams or organizations. If a representative should attempt to induce a student-athlete to enter into an agency contract, rather than a contract with the team or organization, registration is required. Also excluded from the definition are individuals who simply provide information to a student-athlete, but who do not recruit or solicit the student-athlete to sign an agency contract. For example, a professional athlete who gives a student-athlete information about the qualifications of an athlete agent is not required to register unless the professional athlete also attempts to recruit or solicit the student-athlete to sign an agency contract. In the exclusion of certain family members from the definition of "athlete agent," the phrase "or guardian" is bracketed because some states may use another term to describe an individ-

ual who has legal responsibility for the care of another.

The definition of "contact" does not include communications which merely provide information to the student-athlete. For example, a communication about the position a student-athlete could reasonably expect to have in a professional draft does not constitute recruitment or solicitation to enter into an agency contract.

The definition of "student-athlete" applies to a two-sport athlete who has eligibility remaining in one sport. For example, an individual who has signed a contract to play professional basketball is not a student-athlete in basketball, but is a student-athlete in baseball. The definition of "student-athlete" also includes individuals who are not yet in college. It includes high school students, high school dropouts and high school graduates who have delayed matriculation to a college or university so long as the individual may have future eligibility for intercollegiate sports.

54-4803. Administration — Service of process — Subpoenas. —

(a) The department of self-governing agencies, by and through the bureau of occupational licenses, hereinafter referred to as the department, shall administer this chapter.

(b) By acting as an athlete agent in this state, a nonresident individual appoints the department as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

(c) The department may issue subpoenas for any material that is relevant to the administration of this chapter.

History.

I.C., § 54-4803, as added by 2001, ch. 202, § 1, p. 681.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

the act should take effect on and after July 1, 2001.

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that

Cross References.

Bureau of occupational licenses, § 67-2602.

54-4804. Athlete agents — Registration required — Void contracts. — (a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 54-4806 or 54-4808, Idaho Code.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

- (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
- (2) Within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

History.

I.C., § 54-4804, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES**Effective Dates.**

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

The intent of this section is to make the registration requirement as broad as constitutionally permissible consistent with the minimum contacts theory of *International Shoe Company v. Washington*, 326 U.S. 310 (1945). Agents must register in each state in which they have established minimum contacts. For example, an individual in state A contacting a student-athlete in state B is acting as an athlete agent in both states and is therefore required to register in both states.

Subsection (b) provides a safe harbor for an unregistered individual with whom a student-athlete initiates communications. The individual must apply for registration within

seven days from the beginning of any effort to recruit or solicit the student-athlete to enter into agency contract. If the individual does not attempt to recruit or solicit the student-athlete to sign an agency contract, registration is not required. References to "days" in this section and throughout the act mean calendar days.

In addition to the penalties which may be imposed under sections 15 and 17, subsection (c) discourages contact with a student-athlete by an individual who has not registered as an athlete agent. An agency contract resulting from that contract is void, not merely voidable.

54-4805. Registration as athlete agent — Form — Requirements.

— (a) An applicant for registration shall submit an application for registration to the department in a form prescribed by the department. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

- (1) The name of the applicant and the address of the applicant's principal place of business;
- (2) The name of the applicant's business or employer, if applicable;
- (3) Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;
- (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;

- (5) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;
 - (6) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;
 - (7) The names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business, if it is not a corporation, the partners, members, officers, managers, associates or profit sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;
 - (8) Whether the applicant or any person named pursuant to paragraph (7) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this subsection has made a false, misleading, deceptive or fraudulent representation;
 - (10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this subsection arising out of occupational or professional conduct; and
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) of this subsection as an athlete agent in any state.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The department shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (1) Was submitted in the other state within six (6) months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - (2) Contains information substantially similar to, or more comprehensive than, that required in an application submitted in this state; and
 - (3) Was signed by the applicant under penalty of perjury.

History.

I.C., § 54-4805, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

Most of the requirements for disclosure in an application for registration found in subsection (a) are similar to requirements imposed by existing acts. Subsection (a)(6) is not intended to cause an athlete agent who is also an attorney to violate the attorney-client privilege. If an attorney's role is limited to providing legal services to a student-athlete, the attorney is not required to register as an athlete agent or comply with this act. An attorney's actions as an athlete agent, however, are outside the scope of legal services, there is no privilege and the attorney must comply with this act.

It is the intent of this section to require that

records concerning registration of athletes be open to the public.

Subsection (b) provides for reciprocal use of applications in states which have adopted the uniform act. The need for an agent to comply with substantially different application procedures in multiple jurisdictions is eliminated. It is the first of a number of reciprocity provisions found in the act which are intended to ease the burden placed on agents by substantially different registration requirements and to simplify enforcement of the act. Absence of reciprocity provisions in existing acts is a primary reason why the uniform act is needed.

54-4806. Certificate of registration — Issuance or denial — Renewal. — (a) Except as otherwise provided in subsection (b) of this section, the department shall issue a certificate of registration to an individual who complies with section 54-4805(a), Idaho Code, or whose application has been accepted under section 54-4805(b), Idaho Code.

(b) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:

- (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (2) Made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;
 - (3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (4) Engaged in conduct prohibited by section 54-4814, Idaho Code;
 - (5) Had a registration or licensure as an athlete agent suspended, revoked or denied, or been refused renewal of registration or licensure as an athlete agent in any state;
 - (6) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or
 - (7) Engaged in conduct that significantly, adversely reflects on the applicant's credibility, honesty or integrity.
- (c) In making a determination under subsection (b) of this section, the department shall consider:
- (1) How recently the conduct occurred;
 - (2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

(d) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(e) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The department shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(1) Was submitted in the other state within six (6) months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

(f) A certificate of registration or a renewal of a registration is valid for two (2) years.

History.

I.C., § 54-4806, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

This section includes many of the factors which are considered in determining whether to register athlete agents under existing legislation. In addition, the secretary of state is authorized to consider action taken in another state, which has adopted the uniform act, regarding registration or licensure.

A requirement that secretaries of state ex-

change information about denial, suspension, revocation or refusal to renew registration of athlete agents is beyond the scope of this act. Since an agreement to exchange such information would reduce the expense of administering this act and provide for more effective enforcement, it seems likely the secretaries of state will enter into such an agreement.

54-4807. Suspension, revocation or refusal to renew registration.

— (a) The department may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under section 54-4806(b), Idaho Code.

(b) The department may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The provisions of chapter 52, title 67, Idaho Code, shall apply to this chapter.

History.

I.C., § 54-4807, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

the act should take effect on and after July 1,
Section 4 of S.L. 2001, ch. 202 provided that 2001.

OFFICIAL COMMENT

By reference to section 6(b), this section other state to suspend, revoke, or refuse to
permits the secretary of state [department] to renew registration.
consider, among other things, actions in an-

54-4808. Temporary registration. — The department may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

History.

I.C., § 54-4808, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

the act should take effect on and after July 1,
Section 4 of S.L. 2001, ch. 202 provided that 2001.

OFFICIAL COMMENT

The discretion to issue a temporary certificate of registration is broad enough to include issuance of such a certificate even where the registration may be contested. It is not necessary to issue a temporary certificate to protect an individual with whom a student-athlete initiated communications. Under section 4(b), that individual is only required to file an application for registration within seven days after commencement of efforts to recruit or solicit the student-athlete to sign an agency contract.

54-4809. Registration and renewal fees — Deposit — Appropriation. — (1) An application for registration or renewal of registration must be accompanied by a fee, in an amount prescribed by the department but not to exceed two hundred fifty dollars (\$250) for any registration period, for the following:

- (a) An initial application for registration;
 - (b) An application for registration based upon a certificate of registration or licensure issued by another state;
 - (c) An application for renewal of registration; or
 - (d) An application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.
- (2) All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred by the department under the provisions of this chapter shall be a charge against and paid from said fund [account] for such purposes. Notwithstanding the provisions of any other law, the funds collected hereunder shall be immediately available for the

administration of this chapter. In no event will the occupational licenses fund [account] be obligated to pay any claims which, in aggregate with claims already paid, exceed the income to the occupational licenses fund [account] which has been derived by the application of this chapter.

(3) The money paid into the occupational licenses fund [account] is continuously appropriated to the department for expenditure in the manner prescribed herein to defray the expenses of the department in carrying out and enforcing the provisions of this chapter.

History.

I.C., § 54-4809, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertions in subsections (2) and (3) were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

The amount of fees is left for each state to determine. Some states with existing acts have set fees in amounts sufficient to recover the cost of administration. If that approach is taken, a fee for registration or renewal based on registration or renewal of registration in another state should be less than when a complete evaluation and review of an application is necessary.

Athlete agent registration is the cornerstone of this act. High registration fees imposed by some states with existing acts have probably contributed to seemingly small numbers of registrants under existing acts. The success of this act may be contingent on the implementation of a reasonable fee structure which does not motivate non-compliance.

54-4810. Required form of contract. — (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

- (1) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;
- (2) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;
- (3) A description of any expenses that the student-athlete agrees to reimburse;
- (4) A description of the services to be provided to the student-athlete;
- (5) The duration of the contract; and
- (6) The date of execution.

(c) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

- (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;
- (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
- (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

History.

I.C., § 54-4810, as added by 2001, ch. 202, § 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

This section is intended to provide protection to the student-athlete by requiring a form of agency contract similar to those required in some consumer transactions. The drafting committee preferred to require that agency contracts be in traditional written form. However, the adoption of the Electronic Signatures in Global and National Commerce Act (see section 19) eliminated that option.

A student-athlete who opts to void an agency contract under this section because it does not comply with the specified form is not required to return any consideration received to induce the signing of the agency contract because such inducement is prohibited conduct under section 14.

The compensation referred to in subsection (b)(2) is compensation for services intended to induce the student-athlete to sign an agency contract. It does not include compensation

individuals may receive because an athlete agent has been successful in securing an agency contract. For example, the compensation paid employees of an athlete agent who did not participate in inducing the student-athlete to sign an agency contract is not compensation under subsection (b)(2) even though their compensation may be made possible by the income resulting from the agency contract.

Subsection (b) contains references to a student-athlete in a time context in which the individual may be a former student-athlete. This is done for simplicity in drafting. It should be noted that violation of eligibility rules adopted by an educational institution or a national association is not automatic and does not occur until a determination has been made by the educational institution or the national association.

54-4811. Notice to educational institution. — (a) Within seventy-two (72) hours after entering into an agency contract or before the next

scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(b) Within seventy-two (72) hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

History.

I.C., § 54-4811, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

The purpose of this section is to prevent an educational institution from being sanctioned or penalized by allowing an ineligible player to participate in intercollegiate sports. The penalties may be severe. In addition to non-

monetary penalties mentioned in the prefatory note, penalties may include loss of very substantial revenues received for participation in a football bowl game or a post-season basketball tournament.

54-4812. Student-athlete's right to cancel. — (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.

(b) A student-athlete may not waive the right to cancel an agency contract.

(c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

History.

I.C., § 54-4812, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

Because of the disparity in the sophistication of the parties, this section gives the student-athlete or former student-athlete the right to cancel an agency contract within 14

days even if the athlete agent has complied with the provisions of section 10 regarding the form of the contract. The section provides relief to the student-athlete who has entered

into an ill-considered agency contract, but does not provide any assurance that the student-athlete will be eligible to compete in a sport.

54-4813. Required records. — (a) An athlete agent shall retain the following records for a period of five (5) years:

- (1) The name and address of each individual represented by the athlete agent;
- (2) Any agency contract entered into by the athlete agent; and
- (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(b) Records required by subsection (a) of this section to be retained are open to inspection by the department during normal business hours.

History.

I.C., § 54-4813, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that the act should take effect on and after July 1, 2001.

54-4814. Prohibited conduct. — (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

- (1) Give any materially false or misleading information or make a materially false promise or representation;
- (2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
- (3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent may not intentionally:

- (1) Initiate contact with a student-athlete unless registered under this chapter;
- (2) Refuse or fail to retain or permit inspection of the records required to be retained by section 54-4813, Idaho Code;
- (3) Fail to register when required by section 54-4804, Idaho Code;
- (4) Provide materially false or misleading information in an application for registration or renewal of registration;
- (5) Predate or postdate an agency contract; or
- (6) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

History.

I.C., § 54-4814, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES**Effective Dates.**

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

This section describes the conduct which gives rise to criminal penalties and civil liabilities under sections 15 and 16.

Subsection (a)(3) prohibits an athlete agent from making any payment or providing anything of value to an individual who is in a position to influence a student-athlete to enter into an agency contract unless that individual is registered as an athlete agent. There have been numerous instances in which an athlete agent has made payment to or pro-

vided something of value to family members, friends or roommates of student-athletes to enlist their services in inducing a student-athlete to sign an agency contract usually without disclosure to the student-athlete.

If a student-athlete signs an agency contract in the form required by section 10, there is no failure to notify under subsection (b)(6) because the agency contract includes the warning to student-athlete required by section 10(c).

54-4815. Criminal penalties. — An athlete agent who violates section 54-4814, Idaho Code, shall be guilty of a misdemeanor.

History.

I.C., § 54-4815, as added by 2001, ch. 202, § 1, p. 681.

STATUTORY NOTES**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

the act should take effect on and after July 1, 2001.

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that

OFFICIAL COMMENT

The extent of the criminal penalties which may be imposed for violation of the act are left to the states adopting the act because of a wide variation in the criminal penalties provided for by existing acts. Variations in the criminal penalties which may be imposed would not detract from the otherwise uniform

and reciprocal provisions of the act. Some potential criminal penalty is necessary to discourage those individuals who are willing to engage in improper or illegal conduct because of the size of the monetary stakes in the contemporary professional sports world.

54-4816. Civil remedies. — (a) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic

conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(d) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(e) This chapter does not restrict rights, remedies or defenses of any person under law or equity.

History.

I.C., § 54-4816, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

It is assumed that educational institutions will be very reluctant to bring an action against a former student-athlete. Public opinion and the desire to be successful in future recruiting of athletes should cause educational institutions to carefully consider whether to exercise the right established by subsection (a) in most situations. There are, however, known instances of extremely egregious conduct by student-athletes who received lucrative professional contracts which

caused serious damage to educational institutions. Subsection (a) keeps open the possibility of a civil action against those individuals.

Section 16 does not specifically authorize an action by a student-athlete against an athlete agent because the student-athlete can bring an action against an athlete agent under existing law. Subsection (e) preserves the rights of the student-athlete under existing law.

54-4817. Administrative penalty. — The department may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of this chapter.

History.

I.C., § 54-4817, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

The procedure for imposing an administrative penalty and complying with due process requirements are left to the adopting state's administrative procedures law.

54-4818. Uniformity of application and construction. — In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.

I.C., § 54-4818, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES**Effective Dates.**

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

54-4819. Electronic signatures in global and national commerce act. — The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the electronic signatures in global and national commerce act, public law 106-229, 114 Stat. 464 (2000), and supersede, modify and limit the electronic signatures in global and national commerce act.

History.

I.C., § 54-4819, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES**Federal References.**

Section 102 of the electronic signatures in global and national commerce act is codified as 15 USCS § 7002.

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that the act should take effect on and after July 1, 2001.

OFFICIAL COMMENT

The electronic signatures in global and national commerce act (ESGNCA) contains provisions governing the legal effect, validity, or enforceability of electronic records and electronic signatures. The act recognizes con-

tracts which have been formed with the use of electronic records or electronic signatures even though the drafting committee recommends that agency contracts be in the traditional written form.

54-4820. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 54-4820, as added by 2001, ch. 202,
§ 1, p. 681.

STATUTORY NOTES**Effective Dates.**

Section 4 of S.L. 2001, ch. 202 provided that

the act should take effect on and after July 1, 2001.

CHAPTER 49

IDAHO STATE BAR LAWYER ASSISTANCE PROGRAM

SECTION.

54-4901. Definitions — Records and proceedings of the lawyer assistance program.

SECTION.

54-4902. Protected action and communication.

54-4901. Definitions — Records and proceedings of the lawyer assistance program. — (1) As used in this chapter “Idaho State Bar Lawyer Assistance Program” means the lawyer’s assistance program created by the commissioners of the Idaho state bar pursuant to section XII of the Idaho bar commission rules.

(2) The records and proceedings of the lawyer’s assistance program are not subject to subpoena or discovery and are not admissible as evidence in an administrative proceeding or a criminal or civil action.

(3) Members of the board of commissioners of the Idaho state bar association, members of the lawyer’s assistance program committee, employees, contractors and past or present participants in a lawyer’s assistance program may not be compelled to testify before any agency, board, commission or court with respect to the lawyer’s assistance program records and proceedings, regarding a past or current lawyer’s assistance program participant if that information was obtained as a result of performing duties within his or her regular scope of functions for the lawyer’s assistance program or as a program participant.

(4) Records regarding a participant shall be released if a properly completed release form signed by the participant is submitted.

History.

I.C., § 54-4901, as added by 2002, ch. 363,
§ 1, p. 1023.

54-4902. Protected action and communication. — There shall be no liability on the part of and no action for damages against:

(1) Any Idaho state bar commissioner, member of the lawyer’s assistance program committee, member, employee or contractor of a lawyer’s assistance program for any action taken or performed by such person within the scope of the functions of such lawyer’s assistance program when acting without malice and in the reasonable belief that the action taken by him is warranted; or

(2) Any person providing information to the lawyer’s assistance program without malice in the reasonable belief that such information is accurate.

History.

I.C., § 54-4902, as added by 2002, ch. 363,
§ 1, p. 1023.

CHAPTER 50

INSTALLATION OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS

SECTION.

- 54-5001. Declaration of policy.
- 54-5002. Exceptions.
- 54-5003. Definitions.
- 54-5004. Idaho heating, ventilation and air conditioning board.
- 54-5005. Powers and duties of the board — Limitation.
- 54-5006. Administrator of the division of building safety.
- 54-5007. Requirements for certificates of competency.
- 54-5008. Certificate a prerequisite.
- 54-5009. Classification of competency.
- 54-5010. Examinations — Notification — Application.
- 54-5011. Certificate of competency.
- 54-5012. Fees for application for examination, certificates of competency and registration of apprentices.
- 54-5013. Certificate expiration — Renewal — Reinstatement.
- 54-5013A. Revocation or suspension of certificate — Hearings — Taking testimony — Judicial review.
- 54-5014. Certificate to be displayed and carried on the job.

SECTION.

- 54-5015. Exclusive jurisdiction of the state — Restriction on requirement for additional licenses or fees — Clarification of certification, licensing and permitting requirements.
- 54-5016. Permits required — Exception — Local government fees allowed.
- 54-5017. Permits — Application — Fees.
- 54-5018. Inspection by agent.
- 54-5019. Approval and certification of inspection.
- 54-5020. Request for inspection — Fee for reinspection.
- 54-5021. Appointment and qualification of inspectors — No financial interest.
- 54-5022. Violation — Misdemeanor — Penalty.
- 54-5023. Attorney general — Prosecuting attorneys.
- 54-5024. Idaho heating, ventilation and air conditioning board fund created.

54-5001. Declaration of policy. — The purpose of this chapter is to ensure that installation of all heating, ventilation and air conditioning systems in the state of Idaho shall be in accordance with the 2006 International Mechanical Code as published by the International Code Council, the 2006 International Fuel Gas Code as published by the International Code Council, and parts V and VI of the 2006 International Residential Code as published by the International Code Council, applicable to the industry and including amendments, revisions and later editions of these codes as adopted by the Idaho heating, ventilation and air conditioning board. Nothing in this chapter shall require a local government to adopt or implement a mechanical inspection program unless such local government chooses to do so by an ordinance duly adopted. By January 1, 2005, local governments that issue mechanical permits and perform mechanical or fuel gas enforcement activities shall, by ordinance, adopt and enforce the codes as prescribed by this chapter.

History.

I.C., § 54-5001, as added by 2003, ch. 276,

§ 1, p. 733; am. 2004, ch. 272, § 5, p. 757; am. 2008, ch. 255, § 1, p. 747.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 255, in the first sentence, inserted “including” and “revisions and later editions of these codes” and substituted “2006” for “2003”.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

Section 6 of S.L. 2004, ch. 272 declared an emergency. Approved March 23, 2004.

Compiler's Notes.

For more on the international code council, see <http://www.iccsafe.org>.

54-5002. Exceptions. — Certificate of competency requirements of this chapter shall not apply to:

(1) Any person who installs or maintains a heating, ventilation and air conditioning system in a single or duplex family dwelling, including accessory buildings, quarters and grounds in connection with such dwelling; provided that such person owns or is a contract purchaser of the premises; and provided further that such person shall comply with the standards and rules applicable to heating, ventilation and air conditioning installation or repairs as provided in this chapter.

(2) Farm buildings located outside the incorporated limits of any city; and a farm building is hereby defined to be a structure located on agricultural zoned property and designated and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products and includes sheds, barns, corrals or fences. This definition does not include a place for human habitation or a place of regular employment where agricultural products are extracted, processed, treated or packaged; a place used by the public; or conditioned livestock housing.

(3) Logging, mining or construction camps when heating, ventilation or air conditioning installations are made to conform to the recommendations of the department of health and welfare.

(4) Work on heating, ventilation or air conditioning systems on premises owned or operated by an employer who regularly employs maintenance or construction heating, ventilation and air conditioning journeymen, provided that alterations, extensions and new construction shall comply with the minimum standards and rules applicable to heating, ventilation and air conditioning practices in accordance with the provisions of this chapter.

(5) Modular buildings, as defined in section 39-4301, Idaho Code, that are constructed in the state of Idaho for installation on building sites outside the state; provided however, that no modular building shall be installed on a building site in the state of Idaho until it has been approved and bears the insignia of approval of the division as being in compliance with the requirements set forth in section 39-4304, Idaho Code.

History.

I.C., § 54-5002, as added by 2003, ch. 276, § 1, p. 733; am. 2005, ch. 54, § 1, p. 207; am.

2007, ch. 252, § 11, p. 737; am. 2008, ch. 255, § 2, p. 747.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2007 amendment, by ch. 252, in subsection (2), substituted "Agriculture" for "Farm"; and updated the section references in subsection (5).

The 2008 amendment, by ch. 255, rewrote subsection (2), which formerly read: "Agricul-

ture buildings located outside the incorporated limits of any city; and a farm is hereby defined to be an agricultural unit on which the owner or occupant resides and from which the owner or occupant derives his principal income and livelihood."

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5003. Definitions. — As used in this chapter:

(1) "Heating, ventilation and air conditioning (HVAC)" means and includes the business, trade, practice or work, materials and fixtures used in the design, construction, installation, improvement, extension and alteration of all piping, venting, ductwork, appliances and appurtenances in connection with any heating, ventilation or air conditioning system or subsystems of such.

(2) "Heating, ventilation and air conditioning apprentice" means any person who, as his principal occupation, is engaged in learning and assisting in installation, improvement, extension, alteration or repair of HVAC systems. An apprentice shall perform HVAC work under the supervision of an HVAC journeyman or HVAC contractor.

(3) "Heating, ventilation and air conditioning contractor" means any person who fabricates, installs, maintains, services and repairs warm air heating and water heating systems, heat pumps, complete with warm air appliances including, but not limited to, boilers, pool heaters, space heaters, decorative gas and solid-fuel burning appliances, and gas, propane, electric or oil-fired water heaters; ventilating systems complete with blowers and plenum chambers; air conditioning systems complete with air conditioning unit and the ducts, registers, flues, humidity and thermostatic controls of air, liquid or gas temperatures below fifty (50) degrees fahrenheit or ten (10) degrees celsius, and air filters in connection with any of these systems.

(4) "Heating, ventilation and air conditioning journeyman" means any person who, as his principal occupation, is engaged in the installation, improvement, extension, alteration or repair of HVAC systems and who is familiar with the provisions of this chapter and who works in the employ and under direction of an HVAC contractor.

(5) "Heating, ventilation and air conditioning specialty apprentice including specialty limited heating apprentice" means any person who, as his principal occupation, is engaged in learning and assisting in a specific aspect of installation, improvement, extension, alteration or repair of HVAC systems that includes, but is not limited to, such aspects as gas piping, gas appliances and installation, or decorative gas-fired appliances. A specialty apprentice shall perform HVAC work under the supervision of an HVAC journeyman, HVAC specialty journeyman, HVAC contractor or an HVAC specialty contractor.

(6) "Heating, ventilation and air conditioning specialty contractor including specialty limited heating contractor" means any person who, as his

principal occupation, is engaged in a specific aspect of the heating, ventilation and air conditioning trade that includes, but is not limited to, such aspects as gas piping, gas appliances and installation, or decorative gas-fired appliances.

(7) "Heating, ventilation and air conditioning specialty journeyman including specialty limited heating journeyman" means any person who, as his principal occupation, is engaged in a specific aspect of installation, improvement, extension, alteration or repairing of HVAC systems that includes, but is not limited to, such aspects as gas piping, gas appliances and installation, or decorative gas-fired appliances. A specialty journeyman is familiar with the provisions of this chapter and works in the employ and under direction of an HVAC contractor or an HVAC specialty contractor.

(8) "Heating, ventilation and air conditioning system" means any heating, ventilation or air conditioning system in a residential, private, public or semipublic building or structure including, but not limited to, any mechanical means of heating or air conditioning and to gas piping, venting, ductwork and controls.

(9) "Local government" means any incorporated city or any county in the state.

(10) "Specialty limited heating" as it applies to the definitions of "heating, ventilation and air conditioning specialty apprentice," "heating, ventilation and air conditioning specialty contractor" and "heating, ventilation and air conditioning specialty journeyman" means any person who installs, maintains, services and repairs LP gas-fired appliances, LP fuel gas piping and related exhaust venting. This definition of specialty limited heating shall exclude boilers, hydronic systems, ducted forced air systems, ventilating and air conditioning systems, systems with a BTU input rating over three hundred thousand (300,000), solid fuel and electric fueled systems. A "specialty limited heating journeyman" is required to meet the experience requirement and either the education or examination requirement set forth in this section to receive a certificate of competency. The education of a "specialty limited heating journeyman" shall include one hundred twenty (120) hours of instruction approved by the board of professional-technical education in LP gas specialty education. The experience requirement of a "specialty limited heating journeyman" shall be two (2) years' experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision or as a registered HVAC apprentice or registered HVAC specialty apprentice making HVAC installation on the job under the supervision of a qualified HVAC journeyman or qualified HVAC specialty journeyman. The examination required in this section shall be developed by the board of professional-technical education and approved by the Idaho heating, ventilation and air conditioning board.

History.

I.C., § 54-5003, as added by 2003, ch. 276,
§ 1, p. 733; am. 2004, ch. 308, § 1, p. 858; am.

2009, ch. 280, § 1, p. 842; am. 2012, ch. 49,
§ 1, p. 144.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 280, in subsection (5), inserted "including specialty limited heating apprentice"; in subsection (6), inserted "including specialty limited heating contractor"; in subsection (7), inserted "including specialty limited heating journeyman"; and added subsection (10).

The 2012 amendment, by ch. 49, substituted "burning appliances" for "burning furnances" near the middle of subsection (3).

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

54-5004. Idaho heating, ventilation and air conditioning board.

—(1) The Idaho heating, ventilation and air conditioning board, referred to as the board, is hereby created and made part of the division of building safety. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this chapter, and the board shall make, promulgate and publish such rules as may be necessary to carry out the provisions of this chapter. Except as may be limited or prohibited by law, such rules so made and promulgated shall have the force of statute.

(2) The board shall consist of seven (7) members appointed by the governor, with power of removal for cause. Members appointed to fill positions that expire in 2011 and members appointed to fill the two (2) HVAC contractor positions that expire in 2012 shall be appointed for a term of two (2) years. All other members appointed to fill positions that expire in 2012 shall be appointed for a term of three (3) years. Thereafter, all board members shall be appointed for a term of three (3) years. Whenever a vacancy occurs, the governor shall forthwith appoint a qualified person to fill the vacancy for the unexpired portion of the term. All members of the board shall be United States citizens, residents of this state for not less than two (2) years, and qualified by knowledge, integrity and experience to properly perform the functions of the board. All members of the board shall take, subscribe and file with the secretary of state an oath of office in the form, manner and time as prescribed by chapter 4, title 59, Idaho Code.

(3) Of the seven (7) board members, three (3) members shall be active HVAC contractors with not less than five (5) years' experience in the HVAC contracting business; one (1) member shall be a city official; one (1) member shall be a county official; one (1) member shall be a private sector mechanical engineer with experience in mechanical system design; and one (1) member shall be an HVAC specialty contractor.

(4) The board shall meet within thirty (30) days after the appointment of all its members and thereafter at such other times as may be expedient and necessary for the proper performance of its duties. At the board's first meeting, and every two (2) years thereafter, the members shall elect one (1) of their number to be chairman and one (1) of their number to be vice chairman. A majority of the board shall constitute a quorum for the transaction of business and not less than two (2) quorum meetings shall be held each year. The board may delegate to any member, or its chairman or

other employees, the power to make investigations and hold hearings at any place it may deem proper, and to report findings to it; and may delegate to its chairman and employees the performance of ministerial functions.

(5) Each member of the board shall be compensated as provided in section 59-509(n), Idaho Code.

History.

I.C., § 54-5004, as added by 2003, ch. 276,
§ 1, p. 733; am. 2011, ch. 20, § 1, p. 58.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Amendments.

The 2011 amendment, by ch. 20, inserted the second and third sentences in subsection (2); rewrote subsection (3), which formerly read: "Of the seven (7) board members, two (2) members shall be active HVAC contractors with not less than five (5) years' experience in the HVAC contracting business; one (1) member shall be a city official; one (1) member shall be a county official; one (1) member shall be a private sector mechanical engineer with experience in mechanical system design; one (1) member of the initial board shall be a contractor member of the Idaho electrical board who shall serve a two (2) year term and thereafter the sixth board member shall be a

specialty contractor who shall serve a three (3) year term; and one (1) member of the initial board shall be a contractor member of the Idaho plumbing board who shall serve a two (2) year term and thereafter the seventh board member shall be an HVAC contractor with not less than five (5) years' experience in the HVAC contracting business who shall serve a three (3) year term"; in the second sentence of subsection (4), inserted "and every two (2) years thereafter" and "and one (1) of their number to be vice chairman"; and substituted "section 59-509(n)" for "section 59-509(h)" near the end of subsection (5).

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5005. Powers and duties of the board — Limitation. — The board shall have the general administration and supervision of the design, construction, installation, improvement, extension and alteration of heating, ventilation and air conditioning systems, except that which has been heretofore and hereinafter exempted from the jurisdiction of this board, in connection with all buildings, residences and structures in this state including buildings, residences and structures owned by the state or any political subdivision thereof. The division of building safety shall enforce the minimum standards and requirements therefor as provided by this chapter. The board may exercise such powers and duties as are reasonably necessary to carry out the provisions of this chapter, and it may, among other things:

(1) Establish the fees to be charged for reviewing plans, investigations, permits and inspections of heating, ventilation and air conditioning systems under the jurisdiction of the state, and to establish such other fees as it deems necessary.

(2) Hold public meetings and attend or be represented at such meetings, within or without the state, prepare and publish rules pertaining to this chapter, and such other information as may be necessary, and furnish copies thereof to those engaged in the business, trade, practice or work of heating, ventilation and air conditioning and to the public upon request.

(3) Establish by administrative rule the fines to be paid for citations issued and shall hear appeals regarding the imposition of civil penalties for violations of this chapter and rules of the board. The board is authorized to

affirm, reject, decrease or increase the penalty imposed by the administrator. However, in no case shall the penalty exceed one thousand dollars (\$1,000) for each offense.

The powers and duties of the board within the jurisdictional boundaries of local governments that have chosen to adopt and enforce mechanical codes shall be limited to those powers and duties needed to enforce the requirements governing a certificate of competency. Each local government that has chosen to adopt and enforce mechanical codes shall establish fees to be charged for permits and inspections within its jurisdiction.

History.

I.C., § 54-5005, as added by 2003, ch. 276,
§ 1, p. 733; am. 2004, ch. 308, § 2, p. 858.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5006. Administrator of the division of building safety. — The administrator shall exercise such powers and duties as are reasonably necessary to enforce standards provided in this chapter, and he may, among other things:

(1) Serve as secretary to the Idaho heating, ventilation and air conditioning board.

(2) Appoint state mechanical inspectors who shall be authorized to enter and inspect by and through a properly identified person, at reasonable hours, heating, ventilation and air conditioning systems.

(3) Make HVAC inspections for another state or local jurisdiction upon request by an appropriate building official. Such inspections shall be made in accordance with the applicable HVAC codes of the requesting jurisdiction. Fees charged for such inspection services shall be as provided in the rules promulgated by the board.

(4) Notwithstanding the exception provided in section 54-5002(5), Idaho Code, the administrator may make inspections of modular buildings constructed in Idaho upon written request from the manufacturer. Such inspections shall be made in accordance with the codes adopted in this chapter. Inspection fees for such inspections shall be as provided in section 39-4303, Idaho Code. The administrator may issue an insignia of approval if the buildings are in compliance with the requirements set forth in chapter 43, title 39, Idaho Code.

(5) Summon witnesses to appear and testify before him on any matter within the provisions of this chapter. No person shall be required to testify outside the county wherein he resides or where his principal place of business is located. Such summons to testify shall be issued and served in like manner as a subpoena to witness issued from the district court, or in other manner consistent with procedure of the division of building safety. In

case any witness shall fail or refuse to appear and testify upon being summoned as herein provided, the clerk of the district court of the county shall, upon demand by said administrator or his designated agent, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed. Violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court.

(6) Administer oaths and take affirmations of witnesses appearing before him or a duly appointed hearing officer; and have the power to appoint competent persons to issue subpoenas, administer oaths and take testimony.

(7) Impose civil penalties as provided in this chapter and rules of the board.

History.

I.C., § 54-5006, as added by 2003, ch. 276, § 1, p. 733; am. 2004, ch. 308, § 3, p. 858; am.

2005, ch. 54, § 2, p. 207; am. 2007, ch. 252, § 12, p. 737.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

inspection" and "chapter 43, title 39" for "section 39-4121."

Amendments.

The 2007 amendment, by ch. 252, in subsection (4), substituted "provided in section 39-4303, Idaho Code" for "promulgated in board rule and shall be paid prior to the

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

54-5007. Requirements for certificates of competency. — The Idaho heating, ventilation and air conditioning board shall provide standards and procedures and prescribe reasonable rules for examination, qualification and certification of heating, ventilation and air conditioning contractors, journeymen, apprentices, specialty contractors, specialty journeymen and specialty apprentices. HVAC contractors and specialty contractors shall provide a bond in the amount of two thousand dollars (\$2,000) or evidence of such coverage by a corporate industry group bond acceptable to the board.

History.

I.C., § 54-5007, as added by 2003, ch. 276, § 1, p. 733; am. 2004, ch. 308, § 4, p. 858.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

54-5008. Certificate a prerequisite. — On and after July 1, 2004, it shall be unlawful for any person or firm, copartnership, association or corporation to engage in the business, trade, practice or work of heating, ventilation and air conditioning in this state unless such person or responsible person representing such firm, copartnership, association or corpora-

tion, has successfully passed an examination as provided herein and has been issued a state certificate of competency. Such certificate of competency shall not be transferable.

History.

I.C., § 54-5008, as added by 2003, ch. 276,
§ 1, p. 733.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5009. Classification of competency. — There shall be four (4) classifications of competency in the business, trade, practice or work of heating, ventilation and air conditioning as follows:

(1) An apprentice shall be any person who, as his principal occupation, is engaged in learning and assisting in the installation, improvement, extension and alteration or repair of HVAC systems. An apprentice shall not perform HVAC work except under the supervision of an HVAC journeyman or HVAC contractor. This classification applies to a specialty apprentice as defined in section 54-5003, Idaho Code.

(2) A journeyman shall be any person who, as his principal occupation, is engaged in the installation, improvement, extension and alteration or repair of HVAC systems and who is familiar with the provisions of this chapter and who works in the employ and under direction of an HVAC contractor and has successfully completed all trade required classes as directed by the board. This classification applies to a specialty journeyman as defined in section 54-5003, Idaho Code.

(3) A heating, ventilation and air conditioning contractor shall be any business, trade, partnership, company, firm or association engaged in, but not limited to, the business, trade, practice or work of installing, maintaining or repairing heating, ventilation or air conditioning appliances, or gas-fired equipment that requires special venting or gas supply piping systems or subsystems in the state of Idaho.

(4) A heating, ventilation and air conditioning specialty contractor shall be any person who, as his principal occupation, is engaged in a specific aspect of the heating, ventilation and air conditioning trade that includes, but is not limited to, such aspects as gas piping, gas appliances and installation, or decorative gas-fired appliances. A certificate of competency issued for the installation of hearth and barbecue products shall include the authority for all low voltage work necessary to complete the installations.

History.

I.C., § 54-5009, as added by 2003, ch. 276,
§ 1, p. 733; am. 2004, ch. 308, § 5, p. 858.

STATUTORY NOTES

Effective Dates. Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.
Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5010. Examinations — Notification — Application. — (1) The Idaho heating, ventilation and air conditioning board shall establish by rule the requirements as to education, continuing education and examinations relating to classifications of competency.
(2) Times and places for examinations shall be determined by the board and all applicants shall be notified thereof.
(3) All applications for examination shall be filed with the board on a form provided by the board. When any person is designated and authorized to be or act as an agent for the applicant, such authorization shall be in writing, signed by the applicant and the person designated, a certified copy of which shall be filed with the board. All applications shall expire and be canceled after a period of one (1) year if the applicant fails to appear for examination within such period.

History.
I.C., § 54-5010, as added by 2003, ch. 276,
§ 1, p. 733.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5011. Certificate of competency. — On and after July 1, 2004, a certificate of competency in the form of a card shall be issued to an applicant upon successful completion of the examination. The card shall include the holder's name, classification for which the applicant was examined, the year for which the card is current, the holder's signature, certificate number, and the signature of the administrator of the division of building safety.

History.
I.C., § 54-5011, as added by 2003, ch. 276,
§ 1, p. 733.

STATUTORY NOTES

Cross References.
Division of building safety, § 67-2601A.

Effective Dates.
Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5012. Fees for application for examination, certificates of competency and registration of apprentices. — (1) Application for examination.
(a) HVAC contractor or specialty contractor \$35.00

- (b) HVAC journeyman or specialty journeyman \$35.00
- (2) Certificate of competency, initial issue, valid for one (1) year; or may be issued at the annual rate for up to three (3) years.
 - (a) HVAC contractor or specialty contractor \$75.00
 - (b) HVAC journeyman or specialty journeyman \$50.00
- (3) Renewal of certificate of competency, valid for one (1) year; or may be issued at the annual rate for up to three (3) years.
 - (a) HVAC contractor or specialty contractor \$50.00
 - (b) HVAC journeyman or specialty journeyman \$25.00
- (4) Each apprentice and specialty apprentice is required to register with the division of building safety and maintain such registration during the entire period in which work experience is accrued. An apprentice registration shall be valid for five (5) years and shall expire on the last day of the month in which it is set to expire unless renewed. A specialty apprentice registration shall be valid for two (2) years and shall expire on the last day of the month in which it is set to expire unless renewed. The registration fee for an apprentice shall be fifty dollars (\$50.00), and the registration fee for a specialty apprentice shall be twenty dollars (\$20.00).

History.

I.C., § 54-5012, as added by 2003, ch. 276,

§ 1, p. 733; am. 2004, ch. 308, § 6, p. 858; am. 2009, ch. 113, § 1, p. 367.

STATUTORY NOTES**Cross References.**

Division of building safety, § 67-2601A.

quired to register annually. The annual registration fee is fifteen dollars (\$15.00)."

Amendments.

The 2009 amendment, by ch. 113, rewrote subsection (4), which formerly read: "Each apprentice and specialty apprentice is re-

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

54-5013. Certificate expiration — Renewal — Reinstatement. —

(1) Certificates of competency shall expire twelve (12) calendar months from the date of issue, or on the last day of the month of the certification period, unless renewed as provided in this section, or unless sooner revoked or suspended.

(2) Renewal of a certificate may be requested within sixty (60) days prior to the expiration date. Any certificate which has expired may be revived at any time within one (1) year from the first day of the final month of the certification period, by payment of a thirty-five dollar (\$35.00) revival fee in addition to the full annual renewal fee, and if any, all outstanding civil penalties, permits or other fees and penalties.

(3) Any person whose certificate has been revoked may, after the expiration of one (1) year from the date of such revocation, but not before, apply for a new certificate. Successful application shall require satisfactory proof of payment of any and all outstanding civil penalties, permits or other fees and penalties.

History.

I.C., § 54-5013, as added by 2003, ch. 276,
§ 1, p. 733; am. 2004, ch. 308, § 7, p. 858.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2003, ch. 276 declared an
emergency. Approved April 14, 2003.

Section 14 of S.L. 2004, ch. 308 declared an
emergency. Approved March 24, 2004.

54-5013A. Revocation or suspension of certificate — Hearings — Taking testimony — Judicial review. — The administrator shall have the power to revoke or suspend any certificate if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has willfully violated any of the rules prescribed by the board, or as prescribed in this chapter; or has, after due notice, failed or refused to correct, within the specified time, any HVAC installation not in compliance with the provisions of this chapter, or has failed to pay within the time provided, civil penalties which have become final by operation of law, provided, before any certificate shall be revoked or suspended, the holder thereof shall have written notice enumerating the charges against him, and shall be given a hearing by said administrator, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall not be less than five (5) days after the service thereof. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the administrator shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 54-5013A, as added by 2004, ch. 308,
§ 8, p. 858.

STATUTORY NOTES**Effective Dates.**

Section 14 of S.L. 2004, ch. 308 declared an
emergency. Approved March 24, 2004.

54-5014. Certificate to be displayed and carried on the job. —
(1) All holders of a valid certificate of competency for the classification of contractor or specialty contractor shall display a sign or card for public view in the holder's place of business.
(2) All journeymen, specialty journeymen, apprentices, and specialty apprentices shall have their certificate of competency or annual registration card available at all times while on the job.

History.

I.C., § 54-5014, as added by 2003, ch. 276,
§ 1, p. 733; am. 2004, ch. 308, § 9, p. 858.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

54-5015. Exclusive jurisdiction of the state — Restriction on requirement for additional licenses or fees — Clarification of certification, licensing and permitting requirements. — (1) Only the administrator of the division of building safety of the state of Idaho is authorized and empowered to conduct examinations and to pass upon the qualifications of applicants, and to grant and issue certificates of competency and registration of apprentices to such applicants as are found to be qualified to engage in the trade, business, work or practice of heating, ventilation and air conditioning.

(2) No local jurisdiction shall have the authority to require additional certification or registration or to require payment of any fees in order for any HVAC contractor, specialty contractor, journeyman, specialty journeyman, apprentice, or specialty apprentice to engage in the heating, ventilation and air conditioning trade within the local jurisdiction or to issue certificates to persons certified or registered under the provisions of this chapter.

(3) Nothing in this chapter shall restrict a city or county from imposing stricter public safety rules, notwithstanding any provision of Idaho Code.

(4) A certificate issued pursuant to chapter 26, title 54, Idaho Code, or a license issued pursuant to chapter 10, title 54, Idaho Code, shall be acceptable for all HVAC installation work that falls within the scope of the certificate or license that has been issued. This will allow:

(a) Individuals holding a current HVAC or electrical license or a current plumbing certification to install electrical circuitry from the disconnecting means to a water heater and electrical connections to the water heater as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the water heater is no more than fifty (50) feet long;

(b) Individuals holding a current HVAC or electrical license to install:

(i) Electrical space heaters with no attached ductwork;

(ii) Electrical connections to HVAC equipment from the disconnecting means to the unit as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the HVAC equipment is no more than fifty (50) feet long; and

(iii) Ventilating fans, except ducted range hoods in residences;

(c) Individuals holding either an HVAC license or plumbing certification to install:

(i) Boilers that are not otherwise subject to inspection by the industrial commission or its authorized agent; and

(ii) Gas piping and piping for hydronic systems; and

(d) HVAC licensees to install control wiring of twenty-four (24) volts or less for HVAC equipment of five (5) tons or less in capacity.

(5) Notwithstanding any other provision of this section, plumbing certificate holders are not authorized to install control wiring in HVAC equipment, regardless of voltage.

History. § 1, p. 733; am. 2004, ch. 308, § 10, p. 858;
I.C., § 54-5015, as added by 2003, ch. 276, am. 2007, ch. 197, § 6, p. 597.

STATUTORY NOTES

Cross References. Administrator of division of building safety, § 67-2601A.
Industrial commission safety rules, §§ 72-721 to 72-723.

Effective Dates. Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.
Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

Amendments. The 2007 amendment, by ch. 197, in the section catchline, inserted “clarification of cer-

54-5016. Permits required — Exception — Local government fees allowed. — (1) On and after January 1, 2005, it shall be unlawful for any person, firm, partnership, company, association or corporation to do or cause to be done, whether acting as principal, agent or employee, any construction, installation, improvement, extension or alteration of any heating, ventilation or air conditioning system, in any building, residence or structure in the state of Idaho, without first obtaining a permit from the authority having jurisdiction, authorizing such work to be done, except that no permit shall be required to perform work related to repair or maintenance of an existing HVAC system.

(2) To the extent that a plumbing or electrical installation permit issued by the Idaho division of building safety includes any part of an HVAC system installation, or an HVAC installation permit issued by the division includes any part of a plumbing or electrical installation, the permit issued and inspection performed shall be sufficient to satisfy the permitting and inspection requirements of the other division entities.

(3) The plumbing, HVAC and electrical boards shall promulgate rules adopting fees that will allow the division of building safety entity issuing a permit to charge, in addition to the permit fee it would originally charge, additional permit fees that relate to the HVAC portion of an installation for which a plumbing or electrical installation permit is being obtained, or the electrical and plumbing portions of an installation for which an HVAC permit is being obtained.

(4) No provision of this chapter shall preclude local governments from collecting fees for permits and inspections where such work is regulated and enforced by city or county code or ordinance. Municipalities may also require fees for permits and inspections in areas designated by local code or ordinance as areas of city impact.

History. § 1, p. 733; am. 2004, ch. 308, § 11, p. 858;
I.C., § 54-5016, as added by 2003, ch. 276, am. 2007, ch. 197, § 7, p. 597.

STATUTORY NOTES

Cross References. Division of building safety, § 67-2601A.

Amendments. The 2007 amendment, by ch. 197, added

subsections (2) and (3) and redesignated former subsection (2) as (4).

Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5017. Permits — Application — Fees. — (1) On and after January 1, 2005, any person, firm, partnership, company, association or corporation entitled to receive a permit, shall make application to the board on a form provided by the board. The application shall require a description of the work proposed to be done, the location, ownership and use of the premises.

(2) Until fees are established by rule of the board, the following fees shall be paid:

(a) Residential single and duplex family dwelling, a fifty dollar (\$50.00) base permit fee plus an inspection fee of:

(i) Thirty-five dollars (\$35.00) for the first furnace, furnace-air conditioner combination, heat pump, air conditioner, evaporative cooler, unit heater, space heater, decorative gas-fired appliance, incinerator, boiler, pool heater, and similar fixtures or appliances, plus

(ii) Fifteen dollars (\$15.00) for any additional furnace, furnace-air conditioner combination, heat pump, air conditioner, evaporative cooler, unit heater, space heater, decorative gas-fired appliance, incinerator, boiler, pool heater, and similar fixtures or appliances. Fee includes ducts, vents and flues attached thereto.

(iii) Fifteen dollars (\$15.00) for the first exhaust or ventilation duct such as dryer vents, range hood vents, cook stove vents, bath fan vents, and similar exhaust and ventilation ducts, plus

(iv) Five dollars (\$5.00) for any additional exhaust and ventilation ducts.

(v) Fifteen dollars (\$15.00) for the first fixture or appliance outlet of the fuel gas piping system, plus

(vi) Five dollars (\$5.00) for any additional outlets of the fuel gas piping system.

(b) Multifamily, commercial, institutional, industrial and all other installations, a fifty dollar (\$50.00) base permit fee for each building, plus an inspection fee based on the selling price of the completed installation including equipment, appliances, piping systems, materials, and labor of:

(i) Three percent (3%) of the value of the installation through twenty thousand dollars (\$20,000), plus

(ii) Two percent (2%) of the value of installation in excess of twenty thousand dollars (\$20,000) through one hundred thousand dollars (\$100,000), plus

(iii) One percent (1%) of the value of the installation in excess of one hundred thousand dollars (\$100,000) through two hundred thousand dollars (\$200,000), plus

(iv) One-half percent (1/2%) of the value of the installation in excess of two hundred thousand dollars (\$200,000).

(c) Plan check and technical service, a fifty dollar (\$50.00) minimum fee plus fifty dollars (\$50.00) per hour.

(d) Additional and reinspections, a fifty dollar (\$50.00) minimum fee plus an additional fifty dollars (\$50.00) per hour before approval of the installation if the following services are necessary:

(i) Trips to inspect when the permittee had given notice to the inspector that the work was ready for inspection when it was not, or if the permittee has not clearly given the location of the installation either by directions or maps, or if the inspector cannot gain access to make the inspection;

(ii) Trips to inspect corrections required by the inspector as a result of the permittee improperly responding to a corrective notice;

(iii) Each trip necessary to remove a red tag from the job site;

(iv) When corrections have not been made in the prescribed time, unless an extension has been requested and granted.

(3) Expiration of permits. Every permit issued by the HVAC bureau or authority having jurisdiction, shall expire by limitation and become null and void if the work authorized by such permit is not commenced within ninety (90) days from the date of issuance of such permit or if the work authorized by such permit is suspended or abandoned at any time after work is commenced for a period of one hundred eighty (180) days. A permit may be renewed for an additional year upon receiving approval from the bureau or authority having jurisdiction, and a fifty dollar (\$50.00) renewal fee.

(4) No permit. Failure to acquire, post and send permit and to pay required fees in the prescribed time may result in the assessment of a double fee. Any additional offenses within a twelve (12) month period for failure to acquire, post and send permit and to pay required fees in the prescribed time shall result in the assessment of a triple fee.

History.

I.C., § 54-5017, as added by 2003, ch. 276,
§ 1, p. 733; am. 2004, ch. 308, § 12, p. 858.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an
emergency. Approved April 14, 2003.

Section 14 of S.L. 2004, ch. 308 declared an
emergency. Approved March 24, 2004.

54-5018. Inspection by agent. — A designated, qualified, properly identified agent of the authority having jurisdiction shall inspect work performed under each permit to ensure compliance with the provisions of this chapter and rules as promulgated by the board, and applicable codes and ordinances as adopted.

History.

I.C., § 54-5018, as added by 2003, ch. 276,
§ 1, p. 733.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5019. Approval and certification of inspection. — The inspector shall either approve the portion of the work completed at the time of inspection, or shall notify the permit holder of a failure to comply with the provisions of this chapter or rules as promulgated by the board. When final inspection has been made and the work is approved, the inspector shall certify to the permit holder by securely attaching an inspector's tag to the equipment stating completion of the final inspection.

History.

I.C., § 54-5019, as added by 2003, ch. 276, § 1, p. 733.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5020. Request for inspection — Fee for reinspection. — (1) It shall be the duty of the permit holder to notify the division of building safety at least one (1) day prior to the desired inspection, Sundays and holidays excluded, that the project is ready for inspection. If a reinspection is required after the final inspection due to a failure to meet requirements of this chapter, a fee not to exceed the actual cost of reinspection shall be charged.

(2) Local governments that have adopted mechanical codes shall by ordinance establish times within which permit holders shall notify the authority of the desire for an inspection.

History.

I.C., § 54-5020, as added by 2003, ch. 276, § 1, p. 733.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5021. Appointment and qualification of inspectors — No financial interest. — (1) The administrator of the division of building safety, or the local government having jurisdiction, as the case may be, shall appoint such number of inspectors as are necessary for the effective enforcement of this chapter.

(2) All state mechanical inspectors shall be knowledgeable in HVAC

installations and demonstrate knowledge of the provisions of this chapter and rules of the administrator and the board. All inspectors shall be certified by rule of the HVAC board as a commercial mechanical inspector or a residential mechanical inspector, depending upon the duties assigned.

(3) No inspector shall be permitted to be engaged or financially interested in business, trade, practice or work related to this chapter, or sell any supplies connected to the HVAC business, nor act as an agent, directly or indirectly, for any person, firm, copartnership, association or corporation so engaged in HVAC. The qualifications and requirements as set forth in this section shall apply to inspectors employed by a municipality.

(4) Each local government mechanical inspector shall be certified as a mechanical inspector.

History.

I.C., § 54-5021, as added by 2003, ch. 276,
§ 1, p. 733.

STATUTORY NOTES

Cross References.

Administrator of division of building safety,
§ 67-2601A.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an
emergency. Approved April 14, 2003.

54-5022. Violation — Misdemeanor — Penalty. — It shall be a misdemeanor for any person, firm, partnership, company, association or corporation by and through a member, representative or agent to:

(1) Engage in the business, trade, practice or work of HVAC without a certificate of competency or without registration;

(2) Perform work without a permit as provided in this chapter;

(3) Violate any provision of this chapter or the rules made by both the administrator of the division of building safety and the Idaho heating, ventilation and air conditioning board;

(4) Refuse to perform any duty lawfully enjoined upon him by the administrator within the prescribed time; or

(5) Fail, neglect or refuse to obey any lawful order given or made by the administrator.

Such person, firm, partnership, company, association or corporation shall be subject to the civil penalties established by administrative rule but not to exceed one thousand dollars (\$1,000). Each day of such violation shall constitute a separate offense. A violation shall be considered a second or additional offense only if it occurs within one (1) year of the first violation.

History.

I.C., § 54-5022, as added by 2003, ch. 276,
§ 1, p. 733; am. 2004, ch. 308, § 13, p. 858.

STATUTORY NOTES**Cross References.**

Administrator of division of building safety,
§ 67-2601A.

Penalty for misdemeanor where none prescribed, § 18-113.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

Section 14 of S.L. 2004, ch. 308 declared an emergency. Approved March 24, 2004.

54-5023. Attorney general — Prosecuting attorneys. — It shall be the right and duty of the attorney general or the prosecuting attorneys of the various counties to represent and appear for the people of the state of Idaho and the administrator of the division of building safety in all actions and proceedings involving any question under this chapter or under any order or act of the administrator and perform such other services as required.

History.

I.C., § 54-5023, as added by 2003, ch. 276,
§ 1, p. 733.

STATUTORY NOTES**Cross References.**

Administrator of division of building safety,
§ 67-2601A.

Attorney general, § 67-1401 et seq.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

54-5024. Idaho heating, ventilation and air conditioning board fund created. — All money received by the board or the division of building safety under the terms and provisions of this chapter, shall be paid into the state treasury as directed by the provisions of section 59-1014, Idaho Code, and shall be placed, by the state treasurer, to the credit of the Idaho heating, ventilation and air conditioning board fund, which fund is hereby created as a dedicated fund. All such moneys hereafter placed in said fund, are hereby set aside and perpetually appropriated to the division of building safety to carry into effect the provisions of this chapter.

History.

I.C., § 54-5024, as added by 2003, ch. 276,
§ 1, p. 733.

STATUTORY NOTES**Cross References.**

Division of building safety, § 67-2601A.

Effective Dates.

Section 2 of S.L. 2003, ch. 276 declared an emergency. Approved April 14, 2003.

CHAPTER 51

NATUROPATHIC PHYSICIANS LICENSING ACT

SECTION.

- 54-5101. Legislative purpose and intent.
- 54-5102. Definitions.
- 54-5103. License required.
- 54-5104. Scope of practice.
- 54-5105. Prohibitions.
- 54-5106. Exemptions.
- 54-5107. Disclosure by those providing natural health care services.
- 54-5108. Board of naturopathic medical examiners.
- 54-5109. Powers and duties of the board.
- 54-5110. Naturopathic medical formulary council established.

SECTION.

- 54-5111. Fees.
- 54-5112. Qualifications for licensure.
- 54-5113. License standards for other jurisdiction applicants.
- 54-5114. Investigation — Hearing — Subpoena.
- 54-5115. Disciplinary action.
- 54-5116. License denial or revocation procedure.
- 54-5117. Enforcement penalties.
- 54-5118. Severability.

54-5101. Legislative purpose and intent. — It is the intent of the Idaho legislature that nothing in this chapter will limit the decision in *State v. Smith* except to the extent that certain modalities of treatment shall require a license pursuant to this chapter. To that end it is not the intent of the legislature to regulate the practice of natural health care services as it is defined in this chapter, except as expressly provided herein.

History.

I.C., § 54-5101, as added by 2005, ch. 329, § 1, p. 1026.

STATUTORY NOTES

Compiler's Notes.

Chapters 143 and 329⁴ of S.L. 2005 each purported to enact a new chapter 51, title 54, Idaho Code. As last chapter enacted takes precedence, ch. 329 was retained as chapter 51, title 54, while the provisions by ch. 143 were previously redesignated through the use of brackets and accounted for as chapter 53, title 54, Chapter 52, title 54, Idaho Code, having been added by S.L. 2005, ch. 153. The redesignation of the provisions enacted by S.L. 2005, ch. 143, as chapter 53, title 54, was made permanent by S.L. 2006, ch. 16.

Section 2 of S.L. 2005, ch. 329 provided "The Legislature recognizes that the enforce-

ment and administration of Chapter 51, Title 54, Idaho Code, may in some instances involve more than one (1) regulatory board. The Legislature does not intend that there should be any inconsistency in the enforcement of the provisions of Chapter 51, Title 54, Idaho Code. Therefore, the Legislature intends that boards and regulatory bodies seeking to enforce any provision hereof shall coordinate with other affected boards to eliminate duplication of enforcement and inconsistency in rulemaking."

State v. Smith, referred to in this section, is reported at 81 Idaho 103, 337 P.2d 938 (1959).

54-5102. Definitions. — As used in this chapter, the following terms have the meanings as stated:

(1) "Approved naturopathic medical program" means a doctoral level program of supervised resident study in naturopathic medicine approved by the board.

(2) "Board" means the board of naturopathic medical examiners created pursuant to section 54-5108, Idaho Code.

(3) "Minor office procedures" means the methods for the repair and care

incidental to superficial lacerations and abrasions, superficial lesions and the removal of foreign bodies located in the superficial tissues.

(4) "Naturopathic medical formulary" means the list of prescription medicines which naturopathic physicians use in the practice of their profession, as determined by the formulary council and reviewed by the board.

(5) "Naturopathic medical formulary council" means that council comprised of members appointed pursuant to this chapter to determine and authorize the formulary list.

(6) "Naturopathic medicine" means a distinct and comprehensive system of primary health care practiced by naturopathic physicians. For the purpose of this chapter, naturopathic medicine does not include natural health care services as defined herein, however, nothing contained herein is intended to prohibit a naturopathic physician from providing natural health care services.

(7) "Naturopathic physician" and all titles defined in section 54-5103(2), Idaho Code, means a person authorized and licensed to practice naturopathic medicine under this chapter.

(8) "Natural health care services" means the broad domain of health care services and procedures, including diagnosis and treatment, where treatment or advice regarding the human body and its functions is administered by a person who:

- (a) Does not use legend drugs or prescription drugs in such practice;
- (b) Uses only natural elements including, without limitation, air, heat, water and light;
- (c) Only uses class I or class II nonprescription, approved medical devices as defined in section 513 of the federal food, drug and cosmetic act;
- (d) Only uses vitamins, minerals, herbs, natural food products and their extracts, nutritional supplements and homeopathic preparations and remedies not otherwise prohibited by law; and who
- (e) Does not perform surgery.

History.

I.C., § 54-5102, as added by 2005, ch. 329,
§ 1, p. 1026.

STATUTORY NOTES

Federal References.

Section 513 of the Federal Food, Drug and

Cosmetic Act, referred to in this section, is
compiled as 21 U.S.C.S. § 360c.

54-5103. License required. — (1) No person shall hold himself or herself out to others as a naturopathic physician or practice naturopathic medicine as defined herein without first applying for and receiving a license. Persons who are not licensed pursuant to this chapter may provide natural health care services as defined herein pursuant to sections 54-5107 and 54-1804, Idaho Code.

(2) A person holds himself or herself out to others as a naturopathic physician when the person adopts or uses any or all of the following designations: "naturopathic physician," "physician of naturopathic medi-

cine,” “physician of natural medicine,” “doctor of naturopathic medicine,” or its abbreviation “N.M.D.”

(3) The titles and terms in subsection (2) of this section identify naturopathic physicians and are restricted to describing and identifying licensed practitioners. Nothing herein contained shall prohibit or restrict the right to use or employ the titles “doctor of naturopathy,” “naturopathic doctor,” or the designation “N.D.” by a person who has:

(a) Received a doctor of naturopathy degree from a school, college or institution that is licensed, or exempt from licensure as a religious school, college or institution, by the appropriate state educational licensing agency in which its principal operations or offices are located;

(b) Completed a doctoral level course of study that includes coursework and practical experience, which may include apprenticeship, of at least eight hundred (800) hours, upon completion of which a doctor of naturopathy degree is conferred;

(c) Practiced as a doctor of naturopathy for twenty (20) years prior to the effective date of this chapter;

(d) Practiced as a doctor of naturopathy for at least five (5) years and received a doctor of naturopathy degree prior to the effective date of this chapter; or

(e) Received a license pursuant to this chapter.

(4) No person who does not meet the criteria set forth in this section may use the titles and terms contained in subsection (3) of this section.

History.

I.C., § 54-5103, as added by 2005, ch. 329, § 1, p. 1026.

STATUTORY NOTES

Compiler's Notes.

The phrase “effective date of this chapter” in paragraphs (3)(c) and (3)(d) refers to the effective date of S.L. 2005, ch. 329, which was July 1, 2005.

Section 2 of S.L. 2008, ch. 406 provided “Notwithstanding the provisions of Chapter 51, Title 54, Idaho Code, as of the effective date of this act [April 11, 2008], the Board of

Naturopathic Medical Examiners shall issue no new licenses until administrative rules submitted by the Board of Naturopathic Medical Examiners are approved by the members of the First Regular Session of the Sixtieth Idaho Legislature, or as allowed sooner by Executive Order of the Governor.” The contingencies in this legislative provision were not met.

54-5104. Scope of practice. — (1) Diagnostic procedures. A naturopathic physician may use physical and laboratory examinations consistent with naturopathic medical education and training for diagnostic purposes. A naturopathic physician may order and perform diagnostic and imaging tests consistent with naturopathic medical education and training. All diagnostic and imaging tests not consistent with naturopathic medical education and training, must be referred for performance and interpretation by an appropriately licensed health care professional.

(2) Naturopathic physicians are authorized to dispense, administer and prescribe prescription drugs and medical devices determined by the naturopathic medical formulary council, and authorized by the board.

(3) A naturopathic physician may perform minor office procedures pursuant to privileges authorized by the board.

(4) A naturopathic physician may perform those therapies as trained and educated and authorized by the board.

History.

I.C., § 54-5104, as added by 2005, ch. 329,
§ 1, p. 1026.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2008, ch. 406 provided "Notwithstanding the provisions of Chapter 51, Title 54, Idaho Code, as of the effective date of this act [April 11, 2008], the Board of Naturopathic Medical Examiners shall issue no new licenses until administrative rules

submitted by the Board of Naturopathic Medical Examiners are approved by the members of the First Regular Session of the Sixtieth Idaho Legislature, or as allowed sooner by Executive Order of the Governor." The contingencies in this legislative provision were not met.

54-5105. Prohibitions. — A naturopathic physician shall not:

(1) Prescribe, dispense or administer any controlled substance or device identified under the controlled substance act, chapter 27, title 37, Idaho Code, or identified in the federal controlled substance act, 21 U.S.C. sections 801 through 971 (1988), as amended, except as authorized by this chapter;

(2) Perform surgical procedures except those minor office procedures authorized by this chapter;

(3) Practice or claim to practice as a medical doctor, osteopath, dentist, podiatrist, optometrist, psychologist, advanced practice professional nurse, physician assistant, chiropractor, physical therapist, acupuncturist, or any other health care professional not authorized in this chapter unless licensed by the state of Idaho to do so;

(4) Use general or spinal anesthetics;

(5) Administer ionizing radioactive substances for therapeutic purposes;

(6) Perform surgical procedures using a laser device;

(7) Induce or perform an abortion;

(8) Perform surgical procedures involving the eye, ear, tendons, nerves, veins or arteries extending beyond superficial tissue;

(9) Treat any lesion suspicious of malignancy or requiring surgical removal. Lesions suspicious of malignancy or requiring surgical removal shall be referred to an appropriately licensed health care professional. Nothing in this chapter shall prohibit treatment of a person with suspicious or malignant lesions in conjunction with a physician licensed pursuant to chapter 18, title 54, Idaho Code.

(10) Perform chiropractic adjustments as defined in section 54-704, Idaho Code.

(11) Perform physical therapy as defined in section 54-2203, Idaho Code.

History.

I.C., § 54-5105, as added by 2005, ch. 329,
§ 1, p. 1026.

STATUTORY NOTES

Compiler's Notes.

The date "1988" enclosed in parentheses so appeared in the law as enacted.

54-5106. Exemptions. — This chapter is not intended to and does not prohibit, restrict or apply to:

(1) The practice of a profession by individuals who are licensed, certified or registered under other laws of this state and are performing services within the authorized scope of practice; or

(2) The practice of naturopathic medicine by an individual employed by the federal government while the individual is engaged in the performance of duties prescribed by the laws and regulations of the United States; or

(3) An individual rendering aid to a family member or in an emergency, when no fee or other consideration for the service is charged, received, expected or contemplated; or

(4) A person engaged in the sale of vitamins, health foods, over the counter homeopathic products, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited under state or federal law; or

(5) A person engaged in good faith for religious reasons as a matter of conscience; or

(6) The practice by a naturopathic physician duly licensed in another state, territory or the District of Columbia when that naturopathic physician is incidentally called into this state for consultation with a licensed physician; or

(7) The practice of naturopathic medicine by students enrolled in an approved naturopathic medical program. Services shall be performed pursuant to a course of instruction or assignments from an instructor and under the supervision and observation of the instructor; or

(8) Those who practice massage therapy; or

(9) The practice and providing of natural health care services as defined herein in compliance with sections 54-5107 and 54-1804, Idaho Code, by a person who is not licensed, certified or registered in this state as a health care professional or practitioner.

History.

I.C., § 54-5106, as added by 2005, ch. 329,
§ 1, p. 1026.

54-5107. Disclosure by those providing natural health care services. — (1) Any person providing natural health care services who is not a naturopathic physician and who is advertising or charging a fee for those services, shall, prior to providing such services, disclose to the client in a clearly worded statement:

(a) The practitioner's name, business address and telephone number;

(b) The nature of the natural health care services to be provided;

(c) That the practitioner is not an "M.D.," "D.O." or "N.M.D."

(2) Before a practitioner provides natural health care services to a client

for the first time, such practitioner must obtain a written acknowledgment from the client stating that he or she has been provided with the information described in this section and that he or she recognizes that the practitioner is not licensed to practice medicine, surgery or naturopathic medicine. The client shall be provided with a copy of this written acknowledgment which must be maintained for two (2) years by the person providing the services. If the disclosure information changes, then the practitioner has a duty to repeat the disclosure if a client obtains services after the change.

History.

I.C., § 54-5107, as added by 2005, ch. 329,
§ 1, p. 1026.

54-5108. Board of naturopathic medical examiners. — (1) There is hereby established in the department of self-governing agencies, bureau of occupational licenses, the board of naturopathic medical examiners.

(2) The board shall consist of five (5) members, four (4) of whom shall be licensed pursuant to this chapter and one (1) of whom shall be a member of the public with an interest in the rights of consumers of naturopathic physician services.

(3) One (1) member of the initial board shall be appointed for a one (1) year term of office, one (1) member of the initial board shall be appointed for a two (2) year term of office, one (1) member of the initial board shall be appointed for a three (3) year term of office, one (1) member shall be appointed for a four (4) year term of office, and one (1) member of the initial board shall be appointed for a five (5) year term of office. Thereafter, the term of office for each member shall be five (5) years. Members shall serve at the pleasure of the governor.

(4) Appointments to the board shall be made by the governor. Prior to the expiration of the regular term of a member of the board or upon the occurrence of declaration of a vacancy in the membership of the board, the governor shall notify in writing the Idaho association of naturopathic physicians and the Idaho chapter of the American association of naturopathic physicians thereof, and each association shall, within thirty (30) days thereafter, nominate one (1) or more qualified persons to fill such vacancy and shall forthwith forward the nominations to the governor, who shall thereupon appoint from such nominees, the person to be a member of the board to fill such vacancy.

(5) The four (4) members of the board who are naturopathic physicians shall be licensed pursuant to this chapter, practicing within the state of Idaho for the duration of their appointment and shall have been practitioners within the state of Idaho for a minimum of two (2) years immediately preceding appointment.

(6) The initial four (4) licensed naturopathic physician members of the board shall be persons with at least two (2) years of experience in the practice of naturopathic medicine who are eligible to become licensed pursuant to this chapter. In the event of death, resignation or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(7) The board, within thirty (30) days after its appointment, and at least annually thereafter, shall hold a meeting and elect a chairman. The board may hold additional meetings on the call of the chair or at the written request of any two (2) members of the board. The board may appoint such committees as it considers necessary to carry out its duties. A majority of the board shall constitute a quorum.

History.

I.C., § 54-5108, as added by 2005, ch. 329,
§ 1, p. 1026; am. 2008, ch. 406, § 1, p. 1115.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies,
§ 67-2601 et seq.

Amendments.

The 2008 amendment, by ch. 406, added the last sentence in subsection (3); rewrote subsection (4), which formerly read: "Appointments to the board shall be made by the governor from nominations received from the Idaho association of naturopathic physicians, who shall nominate persons qualified for each position to be filled"; and deleted subsection (7), which read: "The governor may remove any member of the board for cause, prior to the expiration of the member's term," and redesignated former subsection (8) as present subsection (7).

Compiler's Notes.

For more on the Idaho association of

naturopathic physicians, see <http://idahonmd.org>.

For more on the Idaho chapter of the American association of naturopathic physicians, see <http://idaanp.org>.

Section 2 of S.L. 2008, ch. 406 provided "Notwithstanding the provisions of Chapter 51, Title 54, Idaho Code, as of the effective date of this act [April 11, 2008], the Board of Naturopathic Medical Examiners shall issue no new licenses until administrative rules submitted by the Board of Naturopathic Medical Examiners are approved by the members of the First Regular Session of the Sixtieth Idaho Legislature, or as allowed sooner by Executive Order of the Governor." The contingencies in this legislative provision were not met.

Effective Dates.

Section 3 of S.L. 2008, ch. 406 declared an emergency. Approved April 11, 2008.

54-5109. Powers and duties of the board. — The board shall have the authority to:

(1) Determine the qualifications of persons applying for licensure pursuant to this chapter and define, by rule, the appropriate scope of naturopathic medicine in this state, provided however, that the scope of practice may not exceed that defined in section 54-5104, Idaho Code;

(2) Grant a special competency certificate for naturopathic childbirth attendance to those licensees who apply, provided that such applicant can document training and experience equal to or greater than that required by the rules of the Idaho board of nursing, pursuant to section 54-1404, Idaho Code. The applicant shall hold hospital privileges and perform such procedures under the supervision of a physician licensed pursuant to chapter 18, title 54, Idaho Code;

(3) Establish special competency certification requirements for licensees as deemed necessary by action of the board;

(4) Adopt rules for the defined scope of practice for licensees;

(5) Hire and appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners;

(6) Adopt such rules as are necessary for the administration of this chapter, including standards of professional conduct;

(7) Conduct investigations and examinations and hold hearings;

(8) Collect fees and other funds as prescribed by this chapter;

(9) Provide a uniform, independently proctored and psychometrically valid examination for use in licensing naturopathic physicians, which will adequately test the applicant's knowledge of naturopathic medicine, including the basic medical sciences and the diagnostic and therapeutic skill of license applicants.

(10) Provide such other services and perform such other functions as are necessary and desirable to fulfill its purposes;

(11) Establish by rule examination standards for licensure and when those examinations will be provided;

(12) Establish a minimum amount and kind of continuing education to be required annually for each naturopathic physician seeking licensure renewal.

History.

I.C., § 54-5109, as added by 2005, ch. 329,
§ 1, p. 1026.

54-5110. Naturopathic medical formulary council established. —

There is hereby established a naturopathic medical formulary council, which is separate and distinct from the board, to be composed of seven (7) members. Two (2) members shall be naturopathic physicians licensed under this chapter, appointed by the board of naturopathic medical examiners. Three (3) members shall be pharmacists licensed under chapter 17, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of pharmacy. Two (2) members shall be physicians licensed under chapter 18, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of medicine. The initial council shall be appointed as follows: One (1) naturopathic physician shall be appointed for a one (1) year term; one (1) physician licensed under chapter 18, title 54, Idaho Code, and one (1) pharmacist shall be appointed for a two (2) year term; and two (2) pharmacists, one (1) naturopathic physician and one (1) physician licensed under chapter 18, title 54, Idaho Code, shall be appointed for a three (3) year term. Thereafter, the term of office shall be three (3) years. A quorum shall consist of five (5) members and shall be required for any vote to be taken. It shall be the duty of the naturopathic medical formulary council to establish a formulary for use by naturopathic physicians, and immediately upon adoption or revision of the formulary, the council shall transmit the approved formulary to the board, which shall adopt the formulary by temporary rule. The formulary will be reviewed annually by the council, or at any time at the request of the board. The formulary list may not go beyond the scope of prescription medicines and medical devices covered by approved naturopathic medical education and training and existing naturopathic medical formularies, or board-approved continuing education. The naturopathic medical formulary shall not include

medicines and devices that are inconsistent with the training provided by approved naturopathic medical colleges. Nothing herein shall allow a naturopathic physician to dispense, administer or prescribe any prescription drug as defined in section 54-1705(31), Idaho Code, or medical device unless such prescription drug or medical device is specifically included in the naturopathic medical formulary.

History.

I.C., § 54-5110, as added by 2005, ch. 329, § 1, p. 1026; am. 2006, ch. 290, § 5, p. 888;

am. 2009, ch. 244, § 7, p. 748; am. 2011, ch. 135, § 7, p. 375.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.
State board of pharmacy, § 54-1706.

tuted “54-1705(30)” for “54-1705(28)” in the last sentence.
The 2011 amendment, by ch. 135, updated the section reference in the last sentence to reflect the 2011 amendment to § 54-1705.

Amendments.

The 2006 amendment, by ch. 290, updated the section reference in the last sentence.
The 2009 amendment, by ch. 244, substituted “54-1705(30)” for “54-1705(28)” in the last sentence.

Effective Dates.

Section 6 of S.L. 2006, ch. 290 declared an emergency. Approved March 31, 2006.

54-5111. Fees. — (1) All fees received under the provisions of this chapter shall be paid to the department of self-governing agencies, bureau of occupational licenses, and deposited in the state treasury to the credit of the occupational licenses fund [account]. All costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account]. In no case shall any salary, expense or other obligation of the board be charged against the general fund.

(2) The fee for licensure shall not exceed five hundred dollars (\$500).

History.

I.C., § 54-5111, as added by 2005, ch. 329, § 1, p. 1026.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

were added by the compiler to correct the name of the referenced account. See § 67-2605.

Compiler’s Notes.

The bracketed insertions in subsection (1)

54-5112. Qualifications for licensure. — To be eligible for a license to practice as a naturopathic physician in the state of Idaho, the applicant shall:

(1) Provide proof, on a form provided by the board, of completion of an approved naturopathic medical program approved by the board;

(2) Have passed a competency-based examination approved by the board covering basic medical sciences and the diagnostic and clinical sciences consistent with the education, training and practice of naturopathic medicine. Such examination shall include, but not be limited to, exams in anatomy, biochemistry, microbiology, immunology, pathology, physiology,

naturopathic philosophy and principles, physical and clinical diagnosis, lab diagnosis, diagnostic imaging, botanical medicine, naturopathic physical medicine, and nutrition;

(3) Applicants may be required to sit for a personal interview by the board to specifically review the applicant's qualifications, professional credentials, knowledge, and skills pertaining to the practice of naturopathic medicine;

(4) Possess a good, ethical and professional reputation;

(5) Be physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation;

(6) Have never had a license to practice naturopathic medicine or other health care license, registration or certificate refused, revoked or suspended by any other state or country for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine, or other health care profession unless that license, registration or certification has been restored to good standing by that state or country;

(7) All licensed naturopathic physicians shall have on file with the board a board-approved disclosure form stating the degrees, training, experience, credentials and the health care services they are board approved to provide;

(8) File a board-approved application and pay the licensing fees.

History.

I.C., § 54-5112, as added by 2005, ch. 329,
§ 1, p. 1026.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2008, ch. 406 provided "Notwithstanding the provisions of Chapter 51, Title 54, Idaho Code, as of the effective date of this act [April 11, 2008], the Board of Naturopathic Medical Examiners shall issue no new licenses until administrative rules

submitted by the Board of Naturopathic Medical Examiners are approved by the members of the First Regular Session of the Sixtieth Idaho Legislature, or as allowed sooner by Executive Order of the Governor." The contingencies in this legislative provision were not met.

54-5113. License standards for other jurisdiction applicants. — The board shall establish by rule the standards for licensure of applicants licensed in another jurisdiction. However, the standards for endorsement of licensure shall not be less than those required for licensure in the state of Idaho.

History.

I.C., § 54-5113, as added by 2005, ch. 329,
§ 1, p. 1026.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2008, ch. 406 provided "Notwithstanding the provisions of Chapter 51, Title 54, Idaho Code, as of the effective date of this act [April 11, 2008], the Board of Naturopathic Medical Examiners shall issue no new licenses until administrative rules

submitted by the Board of Naturopathic Medical Examiners are approved by the members of the First Regular Session of the Sixtieth Idaho Legislature, or as allowed sooner by Executive Order of the Governor." The contingencies in this legislative provision were not met.

54-5114. Investigation — Hearing — Subpoena. — (1) The board shall be empowered to investigate, or cause to be investigated, all complaints regarding any conduct prohibited by this chapter.

(2) The board may conduct hearings to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of a license or to fulfill its responsibilities under this chapter as the board determines necessary.

(3) The board may subpoena witnesses, administer oaths in any hearing or disciplinary proceeding and compel, by subpoena duces tecum, the production of papers and records.

History.

I.C., § 54-5114, as added by 2005, ch. 329,
§ 1, p. 1026.

54-5115. Disciplinary action. — The board may suspend, revoke or refuse to issue or renew a license on any of the following grounds:

(1) The employment of fraud or deceit in obtaining a license under this chapter or in connection with services rendered as a naturopathic physician;

(2) A legal finding of mental incompetence;

(3) Aiding or abetting a person, not duly licensed under this chapter, in claiming to be a naturopathic physician or in practicing naturopathic medicine;

(4) Any negligence, incompetence or misconduct in the performance of naturopathic medicine;

(5) Conviction of any crime involving moral turpitude or the entering of a plea of guilty or the finding of guilt by a jury or court of a commission of a felony or a crime involving moral turpitude;

(6) Practicing as a naturopathic physician when physical or mental abilities are impaired by the use of controlled substances or other drugs, chemicals or alcohol;

(7) Failure of the individual practitioner to maintain his or her professional premises in a clean and sanitary condition;

(8) Any other good cause, relevant to qualifications to practice as a naturopathic physician. The board may not suspend, revoke or refuse to issue or renew a license based on the findings that a licensee's practice is unconventional in the absence of demonstrable harm to a patient and the patient has signed a waiver to the effect that the treatment or device is considered unconventional.

History.

I.C., § 54-5115, as added by 2005, ch. 329,
§ 1, p. 1026.

54-5116. License denial or revocation procedure. — When the board proposes to refuse to issue or renew a license, or proposes to revoke or suspend a license, opportunity for a hearing shall be pursuant to the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 54-5116, as added by 2005, ch. 329,
§ 1, p. 1026.

54-5117. Enforcement penalties. — (1) Every person who knowingly holds himself or herself out as a naturopathic physician or who practices naturopathic medicine as defined herein in this state without a license is guilty of a misdemeanor. A person convicted of a second or subsequent offense shall be guilty of a felony and shall be imprisoned in the state prison for a period not to exceed five (5) years, or shall be fined not more than ten thousand dollars (\$10,000) or shall be punished by both such fine and imprisonment. Nothing herein contained shall regulate, restrict, or prohibit the practice of naturopathy or any naturopathic health care treatment, therapy, or modality, unregulated or permitted by law prior to July 1, 2005, except to the extent that such specific treatment, therapy, or modality, is enumerated herein and requires a license hereunder.

(2) Provided the board determines in good faith that a person is holding himself or herself out as a naturopathic physician, practicing naturopathic medicine as defined herein or using a title or term set forth in section 54-5103(3), Idaho Code, in violation of this chapter, the board may seek an injunction, provided it has given thirty (30) days' prior written notice to cease and desist against any person who does not comply with such notice and who holds himself or herself out as a naturopathic physician, in violation of this chapter and may, in the event a permanent injunction is entered against such person be entitled to all costs and fees incurred by the board in seeking the injunction.

History.

I.C., § 54-5117, as added by 2005, ch. 329,
§ 1, p. 1026.

STATUTORY NOTES**Cross References.**

Penalty for misdemeanors where none prescribed, § 18-113.

54-5118. Severability. — If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

History.

I.C., § 54-5118, as added by 2005, ch. 329,
§ 1, p. 1026.

CHAPTER 52
IDAHO CONTRACTOR REGISTRATION ACT

SECTION.

- 54-5201. Short title.
- 54-5202. Declaration of policy.
- 54-5203. Definitions.
- 54-5204. Registration required.
- 54-5205. Exemptions from registration.
- 54-5206. Idaho contractors board.
- 54-5207. General powers and duties of the board.
- 54-5208. Denial of lien rights.
- 54-5209. Building permits and contractor registration number — Posting at site.
- 54-5210. Application for registration.

SECTION.

- 54-5211. Registration — Renewal.
- 54-5212. Disposition of receipts — Expenses.
- 54-5213. Reciprocal registration.
- 54-5214. Registration certificate — Display.
- 54-5215. Authority to investigate and discipline — Suspension or revocation of registration.
- 54-5216. Reinstatement of registration after discipline.
- 54-5217. Penalties.
- 54-5218. Attorney general — Prosecuting attorney.
- 54-5219. Severability.

54-5201. Short title. — This chapter shall be known and may be cited as the “Idaho Contractor Registration Act.”

History.

I.C., § 54-5201, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5202. Declaration of policy. — The legislature finds and declares that the practice of construction in the state of Idaho affects the public health, safety and welfare of its citizens. The legislature further finds that it is in the public interest to provide a mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners of construction. To aid in fulfilling these purposes, this chapter provides for the registration of construction contractors within the state of Idaho.

History.

I.C., § 54-5202, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5203. Definitions. — As used in this chapter:

- (1) “Board” means the Idaho contractors board as created in section 54-5206, Idaho Code.
- (2) “Bureau chief” means the chief of the bureau of occupational licenses.
- (3) “Construction” means the performance of building, altering, repairing, adding to, subtracting from, improving, reconstructing, moving, exca-

vating, wrecking or demolishing any building, highway, road, bridge, or other structure, project, development or improvement to real property, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

(4) "Contractor" means:

(a) Any person who in any capacity undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to, or does himself or by or through others, perform construction; or

(b) A construction manager who performs construction management services.

(5) "Department" means the department of self-governing agencies of the state of Idaho.

(6) "Person" means any individual, firm, partnership, limited liability company, limited liability partnership, corporation, trust, association or other entity or organization capable of conducting business, or any combination thereof acting as a unit.

History.

I.C., § 54-5203, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Cross References.

Chief of bureau of occupational licenses,
§ 67-2603.
Department of self-governing agencies,
§ 67-2601 et seq.

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an
emergency. Approved March 25, 2005.

54-5204. Registration required. — (1) On and after January 1, 2006, it shall be unlawful for any person to engage in the business of, or hold himself out as, a contractor within this state without being registered as required in this chapter.

(2) It shall be unlawful for a contractor to engage any other contractor who is required by this chapter to be registered as a contractor unless such other contractor furnishes satisfactory proof to the contractor that he is duly registered under the provisions of this chapter.

(3) Any person who engages in the business or acts in the capacity of a contractor, whether or not duly registered, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho contractors board, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

History.

I.C., § 54-5204, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an
emergency. Approved March 25, 2005.

54-5205. Exemptions from registration. — (1) Nothing in this chapter shall be construed to restrict any person licensed, registered, or otherwise regulated by the state of Idaho from engaging in the profession or practice for which they are licensed, registered or otherwise regulated by the state of Idaho including, but not limited to, persons licensed pursuant to chapters 3, 10, 12, 19, 26, 45 and 50, title 54, Idaho Code, nor shall this chapter require such persons otherwise licensed, registered or regulated to obtain such registration as required by this chapter, so long as such person is not acting with the intent to evade this chapter. No such person exempt hereunder may hold himself out as a registered contractor.

(2) In addition to the exemption set forth in subsection (1) of this section, registration as provided for in this chapter shall not be required for the following, so long as such person is not acting with the intent to evade this chapter and so long as such person does not hold himself out as a registered contractor:

- (a) A person who only performs labor or services for wages or a salary as an employee of a contractor, or as an employee of a person otherwise exempt by the provisions set forth in this chapter, or strictly as a volunteer or as part of a bona fide educational curriculum or nonprofit charitable activity for which no wages or salary shall be paid; provided however, that such exemption shall not apply to any subcontractor or other independent contractor who is not otherwise exempt;
- (b) An authorized representative of the United States government, the state of Idaho, or any incorporated municipality, county, alternative form of local government, highway district, reclamation district, or other municipal or political corporation or subdivision of this state;
- (c) A public utility operating under the regulation of the Idaho public utility commission as set forth in title 61, Idaho Code, in the construction, maintenance, or development work incidental to its own business;
- (d) A person who performs repair or operation incidental to the discovery or production of oil, gas or minerals or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit;
- (e) A person who only furnishes materials, supplies or equipment without that person installing or fabricating them into or consuming them in the performance of the work of the construction contractor;
- (f) A person performing work on one (1) undertaking or project considered casual, minor, or inconsequential, whether by one (1) or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than two thousand dollars (\$2,000). The exemptions prescribed in this paragraph (f) shall not apply when the work or construction is part of a larger construction project, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than two thousand dollars (\$2,000) for the purpose of evasion of this chapter or otherwise;
- (g) A farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;
- (h) A person who engages in the construction of an agriculture building

which is exempt from the Idaho building code act as set forth in section 39-4116, Idaho Code;

(i) An irrigation district, canal company, reservoir district, ground water district, water district, water measurement district, recharge district, flood control district, drainage district, or other water delivery or water management entity, or an operating agent of irrigation districts whose board consists of directors of its member districts;

(j) An operation related to clearing or other work upon land in rural districts for fire prevention purposes;

(k) An owner who contracts for work to be performed by a registered contractor on his own property, provided however, this exemption shall not apply to an owner who, with the intent to evade this chapter, constructs a building, residence or other improvement on the owner's property with the intention and for the purpose of selling the improved property at any time during the construction or within twelve (12) months of completion of such construction;

(l) An owner performing construction on the owner's personal residential real property, whether or not occupied by the owner, provided however, this exemption shall not apply to an owner who is otherwise regulated by this chapter who constructs a building, residence or other improvement on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for not less than twelve (12) months prior to the sale of such property;

(m) Owners of commercial properties, or lessees of commercial properties with the consent of the owner, who, whether themselves or with their own employees, perform maintenance, repair, alteration or construction work in or upon the properties;

(n) A real estate licensee acting within the scope of his license pursuant to chapter 20, title 54, Idaho Code, who, incident to a regulated real estate transaction, assists his clients in scheduling or performing nominal maintenance and repairs upon such properties being transferred; provided however, nothing in this section shall otherwise authorize a real estate licensee or a property manager to act in the capacity of a contractor unless registered with the board;

(o) A contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(p) A person working on the person's own residence, if the residence is owned by a person other than the resident;

(q) A person who engages in the construction of buildings to be used primarily for industrial chemical process purposes as set forth in section 39-4103, Idaho Code; or

(r) A person who engages in the construction of a modular building as defined in section 39-4301, Idaho Code, that is constructed in the state of Idaho for installation on a building site outside the state.

History.

I.C., § 54-5205, as added by 2005, ch. 153,
§ 1, p. 471; am. 2007, ch. 252, § 13, p. 737.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 252, updated
the section reference in subsection (2)(r).

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an
emergency. Approved March 25, 2005.

54-5206. Idaho contractors board. — (1) The Idaho contractors board is hereby created and made a part of the bureau of occupational licenses. It shall be the responsibility and duty of the bureau chief to administer this chapter, and the bureau chief shall exercise such powers and duties as are reasonably necessary to enforce the provisions of this chapter. The board may promulgate such rules as may be necessary to carry out the provisions of this chapter in order to effectuate the purposes herein and for the orderly and efficient administration thereof, except as may be limited or prohibited by law and the provisions of this chapter.

(2) The board shall consist of four (4) members who are contractors, and one (1) member of the public at large, all of whom shall be appointed by the governor as follows: one (1) contractor from the northern district consisting of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner counties; one (1) contractor from the southeastern district consisting of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock counties; one (1) contractor from the southwestern district consisting of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley counties; one (1) contractor from the south central district consisting of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties; and one (1) member of the public at large who resides in the state of Idaho and is a person of integrity and good reputation who has lived in this state for at least five (5) years immediately preceding appointment, who has never been registered as a contractor in this or another state, and who has never had a substantial personal, business, professional or pecuniary connection with a contractor except as a purchaser or owner of real property.

(3) Each member of the board who is a contractor shall serve a term of four (4) years and such terms shall be staggered. The initial board shall have one (1) member whose term expires July 1, 2007; one (1) member whose term expires July 1, 2008; one (1) member whose term expires July 1, 2009; and one (1) member whose term shall expire July 1, 2010. The member of the board who is a member of the public at large shall serve a four (4) year term, which initial term shall expire on July 1, 2008. No member of the board may be appointed to more than two (2) consecutive terms.

(4) The board shall meet within thirty (30) days after the appointment of all its members and thereafter at such other times as may be expedient and necessary for the proper performance of its duties, but not less than once during each calendar quarter. At the board's first meeting, the members shall elect one (1) of their number to be chairman. The chairman may serve

in such capacity for a one (1) year term and may not serve in such capacity for more than two (2) consecutive terms. A majority of the board shall constitute a quorum for the transaction of business.

(5) The board may delegate to the bureau chief:

(a) The power to perform ministerial functions, investigate and discipline, hold hearings, appoint hearing officers, summon witnesses to appear, administer oaths and take affirmations of witnesses at any formal proceeding or before a duly appointed hearing officer;

(b) The power to appoint competent persons to issue subpoenas, administer oaths and take testimony; and

(c) The power to enforce orders of the board.

(6) Each member of the board shall be compensated as provided by section 59-509(n), Idaho Code.

(7) On and after January 1, 2006, each member of the board who is a contractor shall be registered in accordance with this chapter and shall be in good standing.

History.

I.C., § 54-5206, as added by 2005, ch. 153,
§ 1, p. 471; am. 2008, ch. 107, § 1, p. 304.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

tuted "section 59-509(n)" for "section 59-509(b)" at the end of subsection (6).

Amendments.

The 2008 amendment, by ch. 107, substi-

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5207. General powers and duties of the board. — The board shall enforce the minimum standards and requirements therefor as provided by this chapter and by rule adopted by the board. The board may exercise such powers and duties as are reasonably necessary to carry out the provisions of this chapter and it may, among other things:

(1) Accept or reject applications for registration and establish the fees to be charged for application, registration and renewal, subject to the provisions of this chapter;

(2) Hold public meetings and attend or be represented at such meetings, within or without the state, prepare and publish rules pertaining to this chapter and such other information as may be necessary, and furnish copies thereof to those engaged in the business, trade, practice or work of contracting and to the public upon request;

(3) Furnish standards and procedures and prescribe reasonable rules for applications, qualifications and registration of contractors, including proration of registration fees and staggering initial annual registration; and

(4) Under such rules as it may adopt, investigate, classify and determine the qualifications of applicants for registration pursuant to this chapter; and

(5) Contract with the bureau of occupational licenses to provide administrative services.

History.

I.C., § 54-5207, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an
emergency. Approved March 25, 2005.

54-5208. Denial of lien rights. — A contractor who is not registered as set forth in this chapter, unless otherwise exempt, shall be denied and shall be deemed to have conclusively waived any right to place a lien upon real property as provided for in chapter 5, title 45, Idaho Code. This section shall not operate as a denial of lien rights for any subcontractor or independent contractor who is duly registered in accordance with this chapter and who is performing services at the direction of another contractor, nor shall it operate as a denial of lien rights for any employee of any contractor who is not duly registered, or for any supplier of materials to such unregistered contractor, so long as such subcontractor, independent contractor, employee or supplier did not have actual knowledge that such contractor was not duly registered, or who reasonably believed that such contractor was duly registered.

History.

I.C., § 54-5208, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an
emergency. Approved March 25, 2005.

JUDICIAL DECISIONS

Eligibility for Lien.

In order to bring an action to collect compensation for work or labor performed and materials supplied in a construction project, the contractor must allege and prove that he

was a duly registered contractor or exempt from registration at all times during the performance of such act or contract. *Parkwest Homes LLC v. Barnson*, 149 Idaho 603, 238 P.3d 203 (2010).

54-5209. Building permits and contractor registration number — Posting at site. — (1) On and after January 1, 2006, no building inspector or such other authority of any county, municipality or district charged with the duty of issuing building permits or other permits for construction of any type shall issue any permit without first requesting presentment of an Idaho contractor's registration number. Such registration number presented shall be conspicuously entered on the face of a permit so issued; provided however, a permit may be issued to a person otherwise exempt from the provisions of this chapter provided such permit shall conspicuously contain the phrase

“no contractor registration provided” on the face of such permit. No authority charged with the duty of issuing such permit shall be required to verify that the person applying for such permit is exempt as provided in this chapter.

(2) All building permits or other permits for construction of any type shall be posted at the construction site in such a manner that the conspicuous statements set forth in subsection (1) of this section are visible.

(3) No person engaged in construction activities who is otherwise exempt as set forth in section 54-5205, Idaho Code, shall be required to have a contractor registration number.

History.

I.C., § 54-5209, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5210. Application for registration. — (1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the board and which shall include the following information pertaining to the applicant:

- (a) Social security number for natural persons or employer tax identification number for other persons;
- (b) The name and address under which the applicant conducts business;
- (c) The name and address of each principal, member, partner, shareholder, or any other person claiming an ownership interest in the business entity for which registration is being applied for;
- (d) A certificate issued by an insurance company authorized to do business in the state of Idaho or other satisfactory proof that the applicant has procured and has in effect worker's compensation insurance or a statement by the contractor as to why such certificate or coverage is not required for the applicant;
- (e) A certificate issued by an insurance company authorized to do business in the state of Idaho that the applicant has procured and has in effect a general liability policy, including products and completed operations insurance covering the applicant's construction operations in the sum of not less than three hundred thousand dollars (\$300,000) single limit. The name of the insurance company, the insured and policy number shall be made available only to persons or their insurers stating that they possess a claim against the contractor;
- (f) A statement of the type of construction to be undertaken by the applicant, or such other information as may be required by the board pursuant to administrative rules adopted by the board; and
- (g) A statement that the applicant and each principal, member, partner, shareholder or any other person claiming an ownership interest in the business entity for which registration is being applied for herein has

never been denied, surrendered or had revoked a contractor's license or registration privilege in this or any other state or, if a license or registration privilege has been denied, surrendered or revoked in this or any other state, an explanation of any such denial, surrender or revocation.

(2) Along with such application, the applicant shall submit a registration fee as may be set by the board to cover its administrative and enforcement costs, not to exceed one hundred fifty dollars (\$150) per year.

(3) An application for registration that has been denied by the board shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and shall be subject to the provisions of that chapter as well as the administrative rules adopted by the board governing contested cases.

History.

I.C., § 54-5210, as added by 2005, ch. 153,
§ 1, p. 471; am. 2009, ch. 89, § 1, p. 258.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 89, in subsection (1)(e), substituted "completed operations" for "continued operations" in the first sentence and added the last sentence; and, in three places in subsection (1)(g), inserted "surrendered" or similar language.

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5211. Registration — Renewal. — A registration shall be issued for a period of not less than one (1) year nor more than five (5) years, as determined by the board. Each registration shall set forth its expiration date on the face of the certificate. No less than thirty (30) days prior to the expiration of such registration, the board shall notify a registered contractor that such registration is set to expire. Reinstatement of a lapsed registration shall require the payment of a renewal fee and reinstatement fee in accordance with the administrative rules adopted by the board. The failure of any registered contractor to renew his registration as required herein and by the administrative rules of the board shall not deprive such person of the right to renewal upon subsequent application for registration and payment of the required board fees.

History.

I.C., § 54-5211, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5212. Disposition of receipts — Expenses. — All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the

occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account].

History.

I.C., § 54-5212, as added by 2005, ch. 153, § 1, p. 471.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertions were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5213. Reciprocal registration. — (1) On and after January 1, 2007, no incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this state shall implement its own program for the registration or licensure of construction contractors.

(2) A contractor may provide a verified copy of any current and unrestricted license, registration, or other type of certification granted to the contractor by any incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this state issued pursuant to a duly adopted and enacted ordinance prior to January 1, 2007, to the board for review, along with a reciprocal registration fee not to exceed fifty dollars (\$50.00), as determined by board rule, which is necessary for the administration and processing of such application. If the review indicates that the license, registration or certification was granted under provisions that were not less stringent than those provided by this chapter, the applicant shall be issued a registration based upon reciprocal registration.

History.

I.C., § 54-5213, as added by 2005, ch. 153, § 1, p. 471; am. 2007, ch. 183, § 1, p. 531.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 183, rewrote the first paragraph, which formerly read: "Nothing in this chapter shall be construed as preventing any incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this state from implementing its own regulation of construction contractors, provided that no such code, ordinance, rule or regulation enacted or adopted by such entity

shall contain provisions less stringent than those requirements provided for by this chapter"; and in the second paragraph, inserted "issued pursuant to a duly adopted and enacted ordinance prior to January 1, 2007."

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

Section 2 of S.L. 2007, ch. 183 declared an emergency retroactively to January 1, 2007 and approved March 26, 2007.

54-5214. Registration certificate — Display. — (1) Upon receipt of a duly completed application, together with the registration fee, and after such verification process as the board may from time to time deem

appropriate by rule, a certificate of registration and a wallet-sized card showing the registrant's name and showing a registration number shall be issued, commencing on the date of issue and continuing in effect for a period of not less than one (1) year nor more than five (5) years, as determined by the board. Application for renewal of registration shall be filed on or before thirty (30) days prior to the expiration date. The board shall issue a certificate of registration to an applicant upon the applicant's compliance with the registration requirements of this chapter. Certificates shall not be assignable nor transferable. Upon any change of ownership or a change of address of a registered contractor entity, the board shall be notified by such entity within thirty (30) days. A certificate of registration, without the payment of a registration fee, shall be issued to any person who is granted a public works contractor license or a construction manager license, so long as those requirements for licensure in Idaho are met.

(2) A contractor registered pursuant to this chapter shall prominently display his contractor registration number for public view in his place of business, on advertising, contracts, permits, company or business letter-heads, and purchase orders and subcontracts within sixty (60) days of issue of registration.

History.

I.C., § 54-5214, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Cross References.

Public works contractor license, § 54-4504.
Construction manager license, § 54-4504.

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5215. Authority to investigate and discipline — Suspension or revocation of registration. — (1) The board may investigate any person engaged in contracting within the state of Idaho, or any person believed to have acted as a contractor without being duly registered as required by this chapter. Upon receipt of a written complaint from a person who claims to have been injured or defrauded by such person, or upon information received by the board, the board shall perform an investigation of the facts alleged against such person. If the board investigation reveals that the facts alleged or received are sufficient to proceed with a formal action, the board may authorize the filing of an administrative complaint against such person and may seek injunctive relief prohibiting such person from engaging in construction.

(2) The board shall have the authority to issue informal letters of reprimand, suspend or revoke a registration, impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000), recover the costs and fees incurred in an investigation and prosecution, or to issue a formal reprimand against any registered contractor if, after an opportunity for a hearing, the board determines that:

(a) A contractor has violated any of the provisions of this chapter

- including, but not limited to, failure to keep current or provide insurance coverage as required by this chapter;
- (b) A contractor has violated any of the provisions of chapter 6, title 48, Idaho Code, relating to consumer protection including, but not limited to, making fraudulent misrepresentations to consumers;
- (c) A contractor employed fraud or deception, made a misrepresentation or misstatement, or employed any unlawful means in applying for or securing registration as a contractor;
- (d) A contractor employed fraud or deception, made a misrepresentation or misstatement, or employed any unlawful means in applying for or securing a building permit or other permits for construction of any type;
- (e) A contractor failed to pay the required fee for registration as provided in this chapter;
- (f) A contractor has been convicted of or has engaged in conduct constituting a violation of public laws, ordinances or rules of this state, or any subdivision thereof, relevant to contracting, reflecting on the registered contractor's ability or qualifications to continue contracting for other persons, and making the registered contractor a threat to the public safety, health or well-being;
- (g) A contractor has engaged in any other conduct whether of the same or a different character than hereinabove specified which constitutes dishonest or dishonorable dealings;
- (h) A contractor was grossly negligent or reckless in his conduct in the performance of construction. For purposes of this chapter, conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of construction in Idaho;
- (i) A contractor had a license, registration or certification revoked, suspended or refused by this or another state, territory, incorporated municipality, county, alternative form of local government, or other municipal or political corporation or subdivision of this or another state, or omitted such information from any application to the board, or failed to divulge such information when requested by the board;
- (j) A contractor has been adjudged mentally incompetent by a court of competent jurisdiction; or
- (k) A contractor interfered with an investigation or disciplinary proceeding by a willful misrepresentation of facts or by the use of threats or harassment against any person to prevent such person from providing evidence in a disciplinary proceeding, investigation or other legal action instituted in accordance with this chapter.
- (3) A contractor whose registration has been revoked or suspended shall be required to return his certificate of registration within the time determined by the board or, upon a failure to do so, shall be liable for civil penalties as set by the board but not to exceed fifty dollars (\$50.00) per day for each day the certificate is not returned after the expiration of the period allowed.
- (4) The suspension or revocation of a registration shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and shall

be subject to the provisions of that chapter as well as the administrative rules adopted by the board governing contested cases.

History.

I.C., § 54-5215, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5216. Reinstatement of registration after discipline. — The board may reinstate a suspended or revoked registration upon a showing that:

- (1) The grounds for such suspension or revocation have been eliminated;
- (2) Such a violation is not likely to reoccur in the future; and
- (3) The public interest is not jeopardized by reinstating the registration.

History.

I.C., § 54-5216, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5217. Penalties. — (1) Any person acting in the capacity of a contractor within the meaning of this chapter without a current registration as herein required shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(2) No person engaged in the business or acting in the capacity of a contractor, unless otherwise exempt, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which registration is required by this chapter without alleging and proving that he was a duly registered contractor, or that he was otherwise exempt as provided for in this chapter, at all times during the performance of such act or contract.

History.

I.C., § 54-5217, as added by 2005, ch. 153,
§ 1, p. 471.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

JUDICIAL DECISIONS**Eligible to Maintain Action.**

In order to bring an action to collect compensation for work or labor performed and materials supplied in a construction project, the contractor must allege and prove that he

was a duly registered contractor or exempt from registration at all times during the performance of such act or contract. *Parkwest Homes LLC v. Barnson*, 149 Idaho 603, 238 P.3d 203 (2010).

54-5218. Attorney general — Prosecuting attorney. — It shall be the right and duty of the attorney general or the prosecuting attorneys of the various counties to represent and appear for the people of the state of Idaho and the department in all actions and proceedings involving any question under this chapter or under any order or act of the board and to perform such other services as are required.

History.

I.C., § 54-5218, as added by 2005, ch. 153, § 1, p. 471.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.

Effective Dates.

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

54-5219. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 54-5219, as added by 2005, ch. 153, § 1, p. 471.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2005, ch. 153 declared an emergency. Approved March 25, 2005.

CHAPTER 53

IDAHO LIQUEFIED PETROLEUM GAS PUBLIC SAFETY ACT

SECTION.

- 54-5301. Short title.
- 54-5302. Declaration of policy.
- 54-5303. Definitions.
- 54-5304. License required — Business entities — Name and address change.
- 54-5305. Exemptions.
- 54-5306. Licensing of applicants — Endorsement.
- 54-5307. Qualifications for a dealer's license.
- 54-5308. Facility license — Equipment — Inspections — Fees.
- 54-5309. Idaho liquefied petroleum gas safety board.

SECTION.

- 54-5310. Powers and duties of the board.
- 54-5311. Denial or issuance of licenses.
- 54-5312. Classifications of licenses.
- 54-5313. Licenses — Records — Fees — Payment of costs and expenses.
- 54-5314. Licenses nontransferable — Notice of change — License fees not refunded.
- 54-5315. Revocation or suspension of license — Procedures for disciplinary proceedings.
- 54-5316. Violations and penalties.
- 54-5317. Duty of prosecuting attorney — Duty of attorney general.

54-5301. Short title. — This chapter shall be known and may be cited as the “Idaho Liquefied Petroleum Gas Public Safety Act.”

History.

I.C., § 54-5101, as added by 2005, ch. 143,

§ 1, p. 441; am. and redesign. 2006, ch. 16, § 8, p. 42.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 16, redesignated the section which was enacted as § 54-5101.

Compiler's Notes.

Chapters 143 and 329 of S.L. 2005 each purported to enact a new chapter 51, title 54, Idaho Code. As last chapter enacted takes

precedence, ch. 329 was retained as chapter 51, title 54, while the provisions enacted by ch. 143 were provisionally designated as chapter 53, title 54. Chapter 52, title 54, Idaho Code, was added by S.L. 2005, ch. 153. The redesignation of the provisions enacted by S.L. 2005, ch. 143, as chapter 53, title 54, was made permanent by S.L. 2006, ch. 16.

54-5302. Declaration of policy. — (1) In order to protect the public health, safety and welfare, every person practicing or offering to practice as a liquefied petroleum gas dealer as herein defined shall submit evidence of meeting such education, experience and examination qualifications as hereinafter provided and be licensed in accordance with the provisions of this chapter.

(2) In order to protect the public health, safety and welfare, it shall be unlawful to own or operate any facility engaged in liquefied petroleum gas facility operation unless such facility is licensed in accordance with the provisions of this chapter.

(3) Every person so licensed and every facility so licensed shall maintain prescribed standards of competence, conduct and operation, and shall annually renew said license in order to continue such practice or operation. This chapter shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.

(4) Notwithstanding any other provisions of law pertaining to the installation of plumbing and heating, ventilation, and air conditioning systems,

and except as provided in section 54-5305, Idaho Code, the provisions of this chapter shall govern all persons and entities engaged in the outdoor installation of any liquefied petroleum gas storage tank, or outdoor piping from the storage tank through the second stage regulator.

History.

I.C., § 54-5102, as added by 2005, ch. 143, § 1, p. 441; am. and redesign. 2006, ch. 16, § 9,

p. 42; am. and redesign. 2006, ch. 110, § 1, p. 303.

STATUTORY NOTES**Amendments.**

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 16, redesign-

nated the section which was enacted as § 54-5102 by S.L. 2005, ch. 143, § 1.

The 2006 amendment, by ch. 110, redesignated the section from § 54-5102 and added subsection (4).

54-5303. Definitions. — (1) “Board” means the liquefied petroleum gas safety board.

(2) “Bureau” means the bureau of occupational licenses.

(3) “Department” means the department of self-governing agencies.

(4) “Good moral character” means the absence of any behavior that violates accepted standards of the community including, but not limited to:

(a) Conviction or plea of guilty to a felony or other crime involving moral turpitude;

(b) Habitual use of drugs or intoxicants to such a degree as to render a person unfit and unreliable to practice;

(c) Revocation or suspension or other restriction of any license or certificate in any state in the previous five (5) years; and

(d) Failure to pay final judgments in any state in the previous seven (7) years.

(5) “License” means a physical document issued by the bureau certifying that a person or facility has met the appropriate qualifications and has been granted the authority to practice or operate in Idaho under the provisions of this chapter.

(6) “Liquefied petroleum gas” or “LPG” or “LP-Gas” means any material that is composed predominantly of or by the mixture of any of the following hydrocarbons: propane, propylene, butanes, isobutanes and butylenes.

(7) “LPG facility” means any facility at a fixed location licensed pursuant to this chapter whose activities include selling, filling, refilling, or commercial handling or commercial storage of LPG.

(8) “LPG dealer” means any person licensed pursuant to this chapter who engages in LPG dealer practice.

(9) “LPG dealer practice” means a person engaging in the selling, filling, refilling, transporting, delivering, or commercial handling of LPG, or engaging in the installation or maintenance of systems, equipment, pipes or containers for the use or storage of LPG.

(10) “LPG code” means the liquefied petroleum gas code adopted by the national fire protection association, inc., commonly known as NFPA 58.

History. § 1, p. 441; am. and redesign. 2006, ch. 16,
I.C., § 54-5103, as added by 2005, ch. 143, § 10, p. 42.

STATUTORY NOTES

Cross References. Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies,
§ 67-2601 et seq.

nated the section which was enacted as § 54-5103.

Amendments. The 2006 amendment, by ch. 16, redesign-

Compiler's Notes. For more on the national fire protection association, see <http://www.nfpa.org>.

54-5304. License required — Business entities — Name and address change. — (1) It shall be unlawful for any person to practice or to offer to engage in any practice governed by this chapter, or display a sign or in any other way advertise or represent oneself as a person who engages in such practices, unless duly licensed in accordance with this chapter. The license shall be posted in the person's established place of business or carried upon the person, and shall be presented upon demand as proof of licensing.

(2) A person, corporation, partnership, trust, association or other legal entity may maintain an established facility for engaging in an operation governed by this chapter, provided that such facility is properly licensed pursuant to this chapter. No person, corporation, partnership, trust, association or other legal entity may operate or conduct business under an assumed business name unless such operation or business is registered in accordance with the rules of the board.

(3) All holders of individual or facility licenses shall notify the board in writing of any change of address of office or established place of business within thirty (30) days of such change.

(4) All holders of individual or facility licenses shall report to the board and provide official documentation of any name change within thirty (30) days after the change becomes final.

History. § 1, p. 441; am. and redesign. 2006, ch. 16,
I.C., § 54-5104, as added by 2005, ch. 143, § 11, p. 42.

STATUTORY NOTES

Amendments. The 2006 amendment, by ch. 16, redesign-

nated the section which was enacted as § 54-5104.

54-5305. Exemptions. — (1) The provisions of this chapter shall not apply to persons or entities engaging in the activities of selling, filling, refilling, transporting, delivering, or the commercial handling of natural gas or petroleum distillates, or persons engaging in the installation or maintenance of equipment used in the selling or handling or use of natural gas or petroleum distillates.

(2) The provisions of this chapter shall not apply to persons engaged in the dispensing of LPG into portable containers.

(3) The provisions of this chapter shall not apply to facilities engaged in the sale or exchange of portable containers possessing LPG.

History.

I.C., § 54-5105, as added by 2005, ch. 143,

§ 1, p. 441; am. and redesign. 2006, ch. 16, § 12, p. 42.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 16, redesign-

nated the section which was enacted as § 54-5105.

54-5306. Licensing of applicants — Endorsement. — (1) The board shall issue a license to each applicant who submits the required information on an application form provided by the board together with the supporting documentation and the required fees, and who demonstrates to the satisfaction of the board that the applicant meets the education, experience, and examination requirements, or the facility requirements, of this chapter and the rules adopted thereto.

(2) Whenever the board determines that another state or country has licensing requirements substantially equivalent to or higher than those in effect pursuant to this chapter, the board may, upon receipt of the required application, supporting documentation, and required fee, issue licenses to applicants who hold current, unsuspended, unrevoked or otherwise nonsanctioned licenses in such other state or country. The board, in its discretion, may require by rule that applicants who received their professional education or experience outside of the United States provide additional information to the board concerning such professional education or experience. The board may also, in its discretion, require successful completion of additional course work or examination.

History.

I.C., § 54-5106, as added by 2005, ch. 143,

§ 1, p. 441; am. and redesign. 2006, ch. 16, § 13, p. 42.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 16, redesign-

nated the section which was enacted as § 54-5106.

54-5307. Qualifications for a dealer's license. — Except as herein otherwise provided, the following shall be considered minimum requirements for a dealer's license. All applicants shall:

(1) Provide verification acceptable to the board of:

(a) Being at least eighteen (18) years of age; and

(b) Good moral character; and

(c) Never having had a license revoked or otherwise sanctioned as part of disciplinary action from this or any other state; and

(d) Never having been convicted, found guilty, or received a withheld judgment for any felony; and

(e) Never having been found by the board to have engaged in conduct prohibited by this chapter.

The board may take into consideration the rehabilitation of the applicant

and other mitigating circumstances when considering applications for a license.

(2) Provide documentation satisfactory to the board that the applicant has successfully completed a certified educational training program approved by the board.

(3) Provide documentation satisfactory to the board that the applicant has successfully completed such experience as may be required by the board.

(4) Provide documentation that the applicant has successfully passed an examination approved by the board.

(5) Prior to July 1, 2006, the board may deem other education, experience, or examinations equivalent to the licensing requirements set forth in this chapter, provided that the board is satisfied, and the applicant provides documentation acceptable to the board that such applicant has:

(a) Documented experience in this state prior to July 1, 2005, in the LPG industry; and

(b) Practiced for not less than five (5) years in the field for which such applicant is applying for a license; and

(c) Applied for a license prior to July 1, 2006.

History.

§ 1, p. 441; am. and redesign. 2006, ch. 16,
I.C., § 54-5107, as added by 2005, ch. 143, § 14, p. 42.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 16, redesignated the section which was enacted as § 54-5107.

54-5308. Facility license — Equipment — Inspections — Fees. —

(1) The board shall issue a facility license to any person, corporation, partnership, trust, association or other legal entity to operate at specific locations only. No facility license shall be transferable, but an applicant may make application for more than one (1) facility license so long as all of the requirements are met for each license individually. Except as herein otherwise provided, the following shall be considered minimum requirements for a facility license:

(a) That the applicant is lawfully entitled to do business within the United States;

(b) That the applicant has not been refused a license for a facility, or its equivalent, or had a personal or facility license revoked in Idaho or in any other state;

(c) That the applicant has designated the name under which the facility will operate and has designated a specific location for which the facility license is to be issued;

(d) For a facility with a storage capacity of four thousand one (4,001) gallons or more, that the applicant has at least one (1) dealer licensed under this chapter who is a resident of the state of Idaho and who is, and will be, responsible for the operation of the facility;

(e) That the applicant has filed an application and paid the required filing fee;

(f) That the applicant's facility meets the requirements of the LPG code, except as designated by the board by rule;

(g) All applications for facility licenses are in writing and contain the name of the applicant, the address and location of the facility and a description of the type of structure and equipment to be used in the operation of the facility, and such further information as may be required by the board to ensure the safe operation of the facility, and its compliance with the requirements of this chapter;

(h) The person responsible for the operation of a facility maintains such records documenting the storage, transportation, dispensation and utilization of LPG as may be required by the laws of the state of Idaho and the rules adopted by the board;

(i) In the event a licensed facility ceases to have a licensed dealer in its employ responsible for operation of the facility, all operation involving practices regulated under this chapter shall cease and written notification of such fact shall be submitted immediately to the board. In the event a licensed facility fails to have a licensed dealer in its employ responsible for the facility within thirty (30) days of said notice, the facility license shall be summarily suspended until a licensed dealer is so employed; and

(j) A certificate issued by an insurance company authorized to do business in the state of Idaho as proof that the applicant has procured and has in effect a general liability policy in the sum of not less than one million dollars (\$1,000,000) single limit.

(2) The board may adopt rules setting forth minimum general standards covering the design, construction, location, installation and operation of systems, equipment, pipes and containers for storing, handling, transporting by tank truck or tank trailer, and using liquefied petroleum gases and specifying the odorization of the gases and the degree thereof.

(3) The board shall adopt inspection rules regarding LPG facilities.

(4) The bureau of occupational licenses shall collect a fee not to exceed five hundred dollars (\$500) for each application, each original license and each annual renewal of any facility license issued pursuant to this chapter and shall deposit all fees in the state treasury in accordance with section 67-2605, Idaho Code. The actual fees shall be set by board rule. Fees paid under the provisions of this chapter shall not be refunded unless otherwise specified herein.

History.

I.C., § 54-5108, as added by 2005, ch. 143, § 1, p. 441; am. and redesi.

g. 2006, ch. 110, § 2, p. 303; am. 2007, ch. 198, § 1, p. 603; am. 2009, ch. 74, § 1, p. 208.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

which appear to be compatible and have been compiled together.

Amendments.

This section was amended by two 2006 acts

The 2006 amendment, by ch. 16, redesignated the section which was enacted as § 54-5108.

The 2006 amendment, by ch. 110, redesignated the section from § 54-5108 and added “For a facility with a storage capacity of four thousand one (4,001) gallons or more” at the beginning of subsection (1)(d).

The 2007 amendment, by ch. 198, added subsection (1)(j).

The 2009 amendment, by ch. 74, in the section catchline, added “fees”; and added subsection (4).

54-5309. Idaho liquefied petroleum gas safety board. — (1) There is hereby established in the department of self-governing agencies the Idaho liquefied petroleum gas safety board and the members thereof shall be appointed by the governor. In making appointments, the governor shall give consideration to recommendations submitted by the rocky mountain propane association and other such nominations as may be received. If recommendations are not made within sixty (60) days of notification and request, the governor may make appointments of any qualified individual.

(2) The board shall consist of five (5) members, two (2) of whom shall be licensed dealers pursuant to the provisions of this chapter; and one (1) of whom shall be a volunteer firefighter in a rural area of the state; and one (1) of whom shall be a firefighter employed by a city fire department in the state; and one (1) of whom shall be a representative of the general public not employed or otherwise connected with the practices or operations regulated pursuant to this chapter.

(3) The members of the first board shall serve for the following terms: one (1) dealer member shall serve for one (1) year; one (1) firefighter member shall serve for two (2) years; one (1) dealer member shall serve for three (3) years; and one (1) firefighter member and the public member shall each serve for four (4) years. Each member shall serve from the effective date of appointment or until a successor is duly appointed and qualified. Upon the expiration of the term of any member of the board, the governor shall appoint the subsequent member for a term of four (4) years. No member shall be appointed for more than two (2) successive terms.

(4) The governor may remove any member of the board for misconduct, incompetence, neglect of duty, or for any other cause.

(5) Three (3) members of the board shall constitute a quorum, and may exercise all the power and authority conferred on the board.

(6) Within thirty (30) days of the appointment of the first board and annually thereafter, the members shall meet and elect from among the members by majority vote of those present a chairman who shall serve for one (1) year.

(7) The board shall meet thereafter no less than annually at such times and at such places as may be specified by the chairman or by the written request of at least two (2) members.

(8) Each member of the board shall be compensated as provided in section 59-509(n), Idaho Code.

History.

I.C., § 54-5109, as added by 2005, ch. 143, § 1, p. 441; am. and redesign. 2006, ch. 16,

§ 16, p. 42; am. 2007, ch. 198, § 2, p. 603; am. 2010, ch. 158, § 1, p. 332.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

Amendments.

The 2006 amendment, by ch. 16, redesignated the section which was enacted as § 54-5109.

The 2007 amendment, by ch. 198, twice

substituted “firefighter” for “fireman” in subsections (2) and (3).

The 2010 amendment, by ch. 158, substituted “59-509(n)” for “59-509(h)” in subsection (8).

Compiler’s Notes.

For more on the rocky mountain propane association, see <http://www.rmpropane.org>.

54-5310. Powers and duties of the board. — The powers and duties of the board are as follows, to:

(1) Authorize all disbursements necessary to carry out the provisions of this chapter;

(2) Approve and administer qualifying examinations to test the knowledge and competence of applicants for a license;

(3) Supervise the approval and issuance of licenses as provided in this chapter, and to license persons who apply to the board and who are qualified pursuant to this chapter;

(4) Renew licenses to persons who apply to the board and who are qualified pursuant to this chapter;

(5) Accept complaints and conduct investigations concerning alleged violations of the provisions of this chapter;

(6) Require and conduct inspections of facilities licensed pursuant to this chapter;

(7) Conduct disciplinary proceedings and take such action as may be appropriate for any violation of this chapter;

(8) Authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest;

(9) Impose reasonable costs, investigative expenses and attorney’s fees incurred in enforcing the provisions of this chapter upon a licensee found to have violated one (1) or more provisions of this chapter;

(10) Enforce all provisions of this chapter and board rules including, but not limited to, issuing subpoenas, and obtaining restraining orders and injunctions prohibiting conduct in violation of the provisions of this chapter; and

(11) Make and publish rules not inconsistent with the laws of this state which are necessary to carry out the provisions of this chapter. The rules relating to safety in the storage, distribution, dispensing, transporting and utilization of LPG in this state and in the manufacture, fabrication, assembly, sale, installation and use of LPG systems, piping, containers, apparatus or appliances shall be just and reasonable and shall conform, except as established by board rule, to the standards of the LPG code relating to the design, construction, installation and use of systems, piping, containers, apparatus, appliances and pertinent equipment for the storage, transportation, dispensation and utilization of LPG.

History.

I.C., § 54-5110, as added by 2005, ch. 143,

§ 1, p. 441; am. and redesign. 2006, ch. 16,
§ 17, p. 42.

STATUTORY NOTES

Cross References. Bureau of occupational licenses, § 67-2602. nated the section which was enacted as § 54-5110.

Amendments.
The 2006 amendment, by ch. 16, redesignig-

54-5311. Denial or issuance of licenses. — (1) The board shall approve or disapprove all applications, and in the event an application is disapproved, the board shall promptly return to the applicant the license fee. Within fifteen (15) days after the denial of a license, the board shall notify the applicant of the denial and specify the reasons for the denial.

(2) If the applicant is qualified for licensing pursuant to the provisions of this chapter, the board shall approve the application and issue a license for the appropriate classification according to section 54-5312, Idaho Code.

(3) If the application for a facility license is complete and meets the provisions of this chapter, and the applicant attests that the equipment used at the facility complies with the minimum safety standards established by the board, the board shall approve the application and issue a license for the appropriate classification according to section 54-5312, Idaho Code.

History. § 1, p. 441; am. and redesignig. 2006, ch. 16, I.C., § 54-5111, as added by 2005, ch. 143, § 18, p. 42.

STATUTORY NOTES

Amendments. 5111 and substituted “54-5312” for “54-5112” in subsections (2) and (3).
The 2006 amendment, by ch. 16, redesignig- nated this section which was enacted as § 54-

54-5312. Classifications of licenses. — For the purpose of administering the provisions of this chapter, the board may issue licenses in such types and classifications as may be necessary and as determined by board rule. Such license types may include, but not be limited to:

- (1) An LPG dealer;
- (2) An LPG facility;
- (3) Any other licenses for persons, businesses or facilities engaged in activities regulated under this chapter that the board determines require a license and are not otherwise exempt under the provisions of this chapter.

History. § 1, p. 441; am. and redesignig. 2006, ch. 16, I.C., § 54-5112, as added by 2005, ch. 143, § 19, p. 42.

STATUTORY NOTES

Amendments. nated the section which was enacted as § 54-5112.
The 2006 amendment, by ch. 16, redesignig-

54-5313. Licenses — Records — Fees — Payment of costs and expenses. — (1) The bureau of occupational licenses shall, upon the approval of the board and subject to the provisions of this chapter, register and issue licenses to persons who have been approved by the board in

accordance with this chapter. The licenses shall bear on their face the seal of the state and the signature of the chief of the bureau of occupational licenses, and shall be effective until the next birthday of the person being licensed. Licenses so issued shall be renewed annually in accordance with section 67-2614, Idaho Code. The provisions of sections 67-2609 through 67-2614, Idaho Code, shall apply to licenses issued pursuant to this chapter.

(2) The board shall keep and the bureau shall maintain a record of board proceedings and a register of all applications that show:

- (a) The name, age, social security number and residency of each applicant;
- (b) The date of application;
- (c) The place of business of such applicant;
- (d) The educational and other qualifications of each applicant;
- (e) Whether or not an examination was required;
- (f) Whether the applicant was denied;
- (g) Whether a license was issued;
- (h) The dates of the action by the board;
- (i) Compliance with continuing education requirements; and
- (j) Such other information as may be deemed necessary by the board.

(3) The bureau of occupational licenses shall collect a fee not to exceed two hundred dollars (\$200) for each application, each original license, and each annual renewal of any license issued pursuant to this chapter, and shall deposit all fees in the state treasury in accordance with section 67-2605, Idaho Code. The actual fees shall be set by board rule. The bureau shall also collect a fee equal to that charged by the examination provider when an examination is required as a condition of licensing. Fees paid under the provisions of this chapter shall not be refunded unless otherwise specified herein.

(4) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be charged against and paid from said fund [account].

History.

I.C., § 54-5113, as added by 2005, ch. 143, § 1, p. 441; am. and redesign. 2006, ch. 16, § 20, p. 42.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2006 amendment, by ch. 16, redesignated the section which was enacted as § 54-5113.

Compiler's Notes.

The bracketed insertions in subsection (4) were added by the compiler to correct the name of the referenced account. See § 67-2605.

54-5314. Licenses nontransferable — Notice of change — License fees not refunded. — (1) Any license issued under the provisions of this chapter shall not be transferable to any other person, firm, association,

partnership, corporation or legal entity, and shall be valid only for the particular premises and particular persons described thereon.

(2) Whenever there is any transfer or change in the ownership of a facility, or whenever there is any change of name or address, such change shall be reported to the board within thirty (30) days together with such documentation as may be required.

History. § 1, p. 441; am. and redesign. 2006, ch. 16,
I.C., § 54-5114, as added by 2005, ch. 143, § 21, p. 42.

STATUTORY NOTES

Amendments. nated the section which was enacted as § 54-
The 2006 amendment, by ch. 16, redesign- 5114.

54-5315. Revocation or suspension of license — Procedures for disciplinary proceedings. — (1) The board shall have the power to refuse to issue a license, or revoke, suspend, refuse to renew, or otherwise sanction any license issued pursuant to the provisions of this chapter for any of the following:

- (a) Procuring a license or registration by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a license or through any form of fraud or misrepresentation;
- (b) Being convicted of a felony;
- (c) Misrepresentation or fraudulent representation in the performance of any duty, conduct or activity regulated under this chapter;
- (d) Violating the provisions of this chapter or any rules of the board or any code of conduct or ethical standards adopted by the board;
- (e) Being incompetent;
- (f) Failing to provide appropriate and personal supervision, if acting as the designated supervisor, to any person gaining experience under the provisions of this chapter.

(2) The board shall have the power to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire, relevant to any hearing before it of any matter which it has authority to investigate, and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of books, records or papers, directed to the sheriff of any county of the state of Idaho where such witness resides or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case.

(3) The procedures for disciplinary proceedings shall be in compliance with the Idaho administrative procedure act and the rules of the office of the attorney general and the bureau of occupational licenses.

History. § 1, p. 441; am. and redesign. 2006, ch. 16,
I.C., § 54-5115, as added by 2005, ch. 143, § 22, p. 42.

STATUTORY NOTES

Cross References.

Administrative procedure act, § 67-5201 et seq.

Attorney general, § 67-1401 et seq.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2006 amendment, by ch. 16, redesignated the section which was enacted as § 54-5115.

54-5316. Violations and penalties. — Any person who shall practice or offer to practice as an LPG dealer or any person who shall operate or attempt to operate an LPG facility as defined in this chapter, without first having a valid and current and unsuspended license issued under the provisions of this chapter, shall be guilty of a misdemeanor and, for each violation, shall be subject to punishment by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for a period of not more than six (6) months, or both.

History.

I.C., § 54-5116, as added by 2005, ch. 143,

§ 1, p. 441; am. and redesign. 2006, ch. 16, § 23, p. 42.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 16, redesign-

ated the section which was enacted as § 54-5116.

54-5317. Duty of prosecuting attorney — Duty of attorney general. — It shall be the duty of the prosecuting attorney of each county to prosecute all violations of this chapter constituting a violation of criminal law and it shall be the duty of the attorney general of the state of Idaho to prosecute any administrative actions brought under the provisions of this chapter as requested by the board.

History.

I.C., § 54-5117, as added by 2005, ch. 143,

§ 1, p. 441; am. and redesign. 2006, ch. 16, § 24, p. 42.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

dated this section which was enacted as § 54-5117.

Amendments.

The 2006 amendment, by ch. 16, redesign-

CHAPTER 54

DRIVING BUSINESSES

SECTION.

54-5401. Short title — Declaration of policy.

54-5402. Definitions.

54-5403. Board — Terms of members — Qualifications — Powers and duties — Meetings — Compensation.

54-5404. Fees.

SECTION.

54-5405. Driving businesses — License requirements.

54-5406. Driving instructors — Requirements.

54-5407. Curriculum components for driving businesses.

54-5408. Discipline.

SECTION.
54-5409. Certain acts prohibited.

STATUTORY NOTES

Compiler’s Notes.
Chapters 65 and 251 of S.L. 2009, effective July 1, 2009, each purported to enact a new chapter 54 in title 54. Accordingly, S.L. 2009, chapter 251 was codified as title 54, chapter

54 while S.L. 2009, chapter 65 was redesignated as title 54, chapter 55 through the use of brackets. The redesignation was made permanent by S.L. 2010, ch. 79.

54-5401. Short title — Declaration of policy. — (1) This chapter shall be known as the “Idaho Driving Businesses Act.”

(2) In order to safeguard life, health and property, and to promote the public welfare, the business of driver education in this state is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to offer private driver education for others in this state, as defined in the provisions of this chapter, unless such person has been licensed or is otherwise exempt under the provisions of this chapter. The right to engage in the business of driver education shall be deemed a personal right, based on the qualifications of the individual as evidenced by the license, and shall not be transferable.

History.
I.C., § 54-5401, as added by 2009, ch. 251, § 2, p. 765.

STATUTORY NOTES

Compiler’s Notes.
Chapters 65 and 251 of S.L. 2009, effective July 1, 2009, each purported to enact a new chapter 54 in title 54. Accordingly, S.L. 2009, chapter 251 was codified as title 54, chapter

54 while S.L. 2009, chapter 65 was redesignated as title 54, chapter 55 through the use of brackets. The redesignation was made permanent by S.L. 2010, ch. 79.

54-5402. Definitions. — As used in this chapter:

(1) “Board” means the Idaho driving businesses licensure board, which will act as the state regulatory body for driving businesses hereinafter provided in this chapter.

(2) “Driver education” means classroom instruction and behind-the-wheel driving time.

(3) “Driving business” means any driver education business, for the education of students in a classroom or motor vehicle, or both, which education shall not qualify a student for a commercial driver’s license or which education is run by a church or synagogue or by a refugee program or those teaching accident prevention courses taught by or regulated or licensed by the transportation department.

(4) “Driving instructor” means a person who is licensed by the board to teach the classroom instruction phase and behind-the-wheel training phase of automobile driver training. This term does not apply to any independent

certified driving instructor who participates in a state or federal program directed at training or retraining persons in occupational skills, or to instructors who operate or work for public driving businesses that are overseen by the department of education.

(5) "License" means a document issued by the bureau of occupational licenses on behalf of the board officially documenting the individual's right to practice as a driving instructor or to operate a driving business within the state of Idaho.

(6) "Student" means a person aged fourteen and one-half (14 1/2) up to seventeen (17) years.

History.

I.C., § 54-5402, as added by 2009, ch. 251,
§ 2, p. 765.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

54-5403. Board — Terms of members — Qualifications — Powers and duties — Meetings — Compensation. — (1) A driving businesses licensure board is hereby established in the department of self-governing agencies whose duty it shall be to administer the provisions of this chapter.

(2) The board shall consist of five (5) members appointed by the governor. The governor may consider recommendations for appointment to the board from the Idaho association of professional driving businesses, any association of driving businesses or from any individual residing in this state. The board shall consist of four (4) members who have been in the driving business for at least five (5) years and one (1) member of the public who has been a customer of private driver education.

(3) Members shall begin their terms on July 1, 2009, and serve at the pleasure of the governor. Terms shall initially be staggered as follows: one (1) member whose term expires July 1, 2010; two (2) members whose terms expire July 1, 2011; and two (2) members whose terms expire July 1, 2012. Thereafter, each member of the board shall serve three (3) year terms. No member of the board may be appointed to more than two (2) consecutive terms. Members of the board shall hold office until the expiration of the term for which they were appointed and until their successors have been appointed and qualified. In the event of a vacancy other than expiration of a term, the governor shall appoint a replacement to fill the vacancy for the remainder of the unexpired term.

(4) Members of the board who are driving business owners shall be citizens of the United States and residents of this state, and they shall have been licensed driving business owners with a minimum of five (5) years of continuous licensing prior to being nominated, and shall never have been the subject of a disciplinary action under the provisions of section 54-5409, Idaho Code.

(5) The board shall:

(a) Enforce the minimum standards and requirements as provided in this

chapter and by rule adopted by the board. The board may promulgate such rules, in compliance with chapter 52, title 67, Idaho Code, as may be necessary to carry out the provisions of this chapter in order to effectuate the purposes herein and for the orderly and efficient administration thereof, except as may be limited or prohibited by law and the provisions of this chapter;

(b) Accept or reject applications for licensing, business and instruction, and establish the fees to be charged for original application and renewal, subject to the provisions of this chapter;

(c) Hold and attend public meetings, and furnish copies of information to those engaged in the business and to the public upon request;

(d) Review and approve instructor training curriculum and programs;

(e) Contract with the bureau of occupational licenses to provide administrative services;

(f) Include a link on the bureau of occupational licenses' website to current curriculum components offered by private driver education businesses; and

(g) Adopt rules providing for continuing education.

(6) The board shall have the authority to conduct inspections and audits of any licensed driving business or any licensed instructor to ensure compliance with the laws and rules of the board. Failure to cooperate with an inspection or audit may constitute grounds for disciplinary action.

(7) The board shall meet within thirty (30) days after the appointment of its members and thereafter at such times as may be expedient and necessary for the proper performance of its duties, but it shall not meet less than once per year.

(8) At the board's first meeting, the members shall elect one (1) of their number to be chairman and then shall elect a chairman annually thereafter. The chairman may serve in such capacity for a one (1) year term and may not serve in such capacity for more than two (2) consecutive terms.

(9) A majority of the board shall constitute a quorum for the transaction of business.

(10) Each member of the board shall be compensated as provided by section 59-509(k), Idaho Code.

History.

I.C., § 54-5403, as added by 2009, ch. 251,
§ 2, p. 765; am. 2010, ch. 145, § 1, p. 306.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies,
§ 67-2601 et seq.

Effective Dates.

Section 5 of S.L. 2010, ch. 145 declared an
emergency. Approved March 29, 2010.

Amendments.

The 2010 amendment, by ch. 145, added
paragraph (5)(g).

54-5404. Fees. — (1) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in

the state treasury to the credit of the occupational licenses fund [account]. All costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account]. Actual fees shall be set by administrative rule.

(2) An original application fee shall be no more than one hundred dollars (\$100).

(3) The fee for the original license, and the annual renewal, of any instructor license or apprentice permit shall be no more than one hundred dollars (\$100).

(4) A fee for the original license, and the annual renewal, of any driving business license shall be no more than nine hundred dollars (\$900).

(5) All licenses issued under the provisions of this chapter shall be subject to annual renewal. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(6) All fees are nonrefundable.

History.

I.C., § 54-5404, as added by 2009, ch. 251,
§ 2, p. 765.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions in subsection (1) were added by the compiler to correct the

name of the referenced account. See § 67-2605.

54-5405. Driving businesses — License requirements. — (1) No private driver training business shall be established nor shall any existing business continue to operate unless the business applies for and obtains from the board a license which expires on the license issue date and must be renewed annually. The application for license shall include the name of the owner, a satisfactory fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database, the location of the business, a certificate of occupancy, a certificate of automobile insurance, a list of licensed instructors, proof of an annual vehicle check, board approved curriculum components and a course of instruction for students, which shall include the following:

- (a) Not less than thirty (30) hours of classroom instruction;
- (b) Not less than six (6) hours of behind-the-wheel practice driving; and
- (c) Not less than six (6) hours of observation.

(2) Any private driver training business or driving instructor licensed pursuant to this chapter shall be exempt from the provisions of title 33, Idaho Code, that regulate driver education as long as such license is current and valid and the private driver training business or driving instructor is acting pursuant to activities that the license permits.

(3) Any driving business licensed pursuant to this chapter may contract with a public school to provide driver education. Any driving business that contracts with a public school to provide driver education may be allowed to use the services of any or all of the driving instructors of that driving

business. Once a person has been licensed as a driving instructor, that person is authorized to teach in any approved driver education program.

(4) If the board granted any business a license without the satisfactory fingerprint-based criminal history check as provided in subsection (1) of this section, such licensee shall obtain and submit the required fingerprint-based criminal history check to the board on or before the date of the licensee's first renewal occurring after the effective date of this act.

History.

I.C., § 54-5405, as added by 2009, ch. 251, § 2, p. 765; am. 2010, ch. 145, § 2, p. 306.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 145, in the last sentence in the introductory paragraph in subsection (1), inserted "a satisfactory fingerprint-based," deleted "background" following "criminal history," inserted "of the Idaho central criminal database and the federal bureau of investigation criminal history database," and substituted "licensed instructors" for "certified instructors"; and added subsection (4).

Compiler's Notes.

The phrase "the effective date of this act" in subsection (4) refers to the effective date of S.L. 2010, ch. 145, which was March 29, 2010.

The Idaho central criminal history data-

base, referred to in subsection (1), is the state's central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.idaho.gov/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in subsection (1), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjis/iafis.htm>.

Effective Dates.

Section 5 of S.L. 2010, ch. 145 declared an emergency. Approved March 29, 2010.

54-5406. Driving instructors — Requirements. — (1) Each person applying for a driving instructor license must complete an application provided by the bureau of occupational licenses that requires the applicant to be at least twenty-one (21) years of age, have written evidence of graduation from a high school, an accredited college or university or a GED, a valid driver's license and a satisfactory driving record from the jurisdiction from which the license was issued, a satisfactory fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database, a medical certificate and any required completed coursework. Licensees shall certify that they hold a current medical certificate at the time of license renewal.

(2) On and after July 1, 2010, every new applicant for a license pursuant to this chapter shall have completed a board approved apprenticeship training program of not less than sixty (60) hours of classroom instruction and one hundred eight (108) hours of behind-the-wheel training.

(3) If the board granted any instructor a license without the satisfactory fingerprint-based criminal history check as provided in subsection (1) of this section, such licensee shall obtain and submit the required fingerprint-based criminal history check to the board on or before the date of the licensee's first renewal occurring after the effective date of this act.

History.

I.C., § 54-5406, as added by 2009, ch. 251, § 2, p. 765; am. 2010, ch. 145, § 3, p. 306.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2010 amendment, by ch. 145, rewrote subsection (1) to the extent that a detailed comparison is impracticable and added subsection (3).

Compiler's Notes.

The federal bureau of investigation criminal history database, referred to in the second sentence of subsection (1), is the integrated

automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjisdliafis.htm>.

The phrase "the effective date of this act" in subsection (3) refers to the effective date of S.L. 2010, ch. 145, which was March 29, 2010.

Effective Dates.

Section 5 of S.L. 2010, ch. 145 declared an emergency. Approved March 29, 2010.

54-5407. Curriculum components for driving businesses. — The curriculum components for driving businesses shall be approved by the board and reviewed annually and the curriculum components must accompany any original application for a license.

History.

I.C., § 54-5407, as added by 2009, ch. 251, § 2, p. 765.

54-5408. Discipline. — (1) Grounds for discipline. The board shall have the power to deny any application for or renewal of a license or to revoke, suspend or otherwise sanction any such license issued pursuant to this chapter and to limit or restrict the practice of any driving instructor or driving business upon a determination by the board that the person or business:

- (a) Was convicted, found guilty, received a withheld judgment or suspended sentence in this or any other state, of any action constituting a felony or of a crime involving moral turpitude;
- (b) Violated the provisions of this chapter or rules, standards of conduct and practice, or any ethical codes as may be adopted by the board;
- (c) Is or has been negligent or reckless in the practice of driver education; or
- (d) Has had any license, certificate or registration to work as a driving instructor or operate as a driving business suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(2) Every person or business subject to disciplinary proceedings shall be afforded an opportunity for hearing.

- (a) All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code.
- (b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence.
- (3) The board may, pursuant to an order of discipline, require the person

or business to pay all or part of the costs and fees incurred by the board in proceedings upon which the order was entered.

(4) The board may, pursuant to an order of discipline, require the person or business to pay an administrative fine not to exceed one thousand dollars (\$1,000) for each violation identified in the order.

History.

I.C., § 54-5408, as added by 2009, ch. 251, § 2, p. 765; am. 2010, ch. 145, § 4, p. 306.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 145, throughout the section, inserted “or business” following “person”; in the introductory paragraph in subsection (1), deleted “driving instructor” preceding the first occurrence of “license” and inserted “or driving business”; and in para-

graph (1)(d), inserted “or operate as a driving business.”

Effective Dates.

Section 5 of S.L. 2010, ch. 145 declared an emergency. Approved March 29, 2010.

54-5409. Certain acts prohibited. — (1) The following acts shall be unlawful and punishable as a misdemeanor:

- (a) The violation of any of the provisions of this chapter;
- (b) Permitting any person in one’s employ, supervision or control to practice as a driving instructor unless that person has complied with the provisions of this chapter;
- (c) Practicing or offering to practice any of the occupations defined in this chapter, unless licensed as herein provided;
- (d) Maintaining or operating a driving business unless such business is licensed as herein provided.

(2) The board may seek injunction against any person who practices as a driving instructor or who operates a driving business in violation of the provisions of this chapter. In the event a permanent injunction is entered against such person, or plea or verdict of guilty is entered in any criminal matter, the board may impose a civil penalty in the amount of all costs and fees incurred by the board in prosecuting the matter.

History.

I.C., § 54-5409, as added by 2009, ch. 251, § 2, p. 765.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none prescribed, § 18-113.

CHAPTER 55

MIDWIFERY

SECTION.

- 54-5501. Legislative purpose and intent. [Null and void, effective July 1, 2014.]
- 54-5502. Definitions. [Null and void, effective July 1, 2014.]
- 54-5503. Board of midwifery created. [Null and void, effective July 1, 2014.]
- 54-5504. Board of midwifery — Powers and duties. [Null and void, effective July 1, 2014.]
- 54-5505. Rulemaking. [Null and void, effective July 1, 2014.]
- 54-5506. Licensure — Penalty. [Null and void, effective July 1, 2014.]
- 54-5507. Qualifications for licensure. [Null

SECTION.

- and void, effective July 1, 2014.]
- 54-5508. Exemptions. [Null and void, effective July 1, 2014.]
- 54-5509. Fees. [Null and void, effective July 1, 2014.]
- 54-5510. Client protection — Unprofessional conduct. [Null and void, effective July 1, 2014.]
- 54-5511. Disclosure and recordkeeping — License renewal. [Null and void, effective July 1, 2014.]
- 54-5512. Immune from vicarious liability. [Null and void, effective July 1, 2014.]
- 54-5513. Severability. [Null and void, effective July 1, 2014.]

STATUTORY NOTES

Compiler's Notes.

Chapters 65 and 251 of S.L. 2009, effective July 1, 2009, each purported to enact a new chapter 54 in title 54. Accordingly, S.L. 2009, chapter 251 was codified as title 54, chapter

54 while S.L. 2009, chapter 65 was redesignated as title 54, chapter 55 through the use of brackets. The redesignation was made permanent by S.L. 2010, ch. 79.

54-5501. Legislative purpose and intent. [Null and void, effective July 1, 2014.] — The legislature finds and declares that the practice of midwifery has been a part of the culture and tradition of Idaho since before pioneer days and that for personal, religious and economic reasons some Idaho citizens choose midwifery care. The purpose of this chapter is to preserve the rights of families to deliver their children in a setting of their choice, to provide additional maternity care options for Idaho's families, to protect the public health, safety and welfare and to provide a mechanism to assure quality care.

History.

I.C., § 54-5401, as added by 2009, ch. 65,

§ 1, p. 177; am. and redesign. 2010, ch. 79, § 21, p. 133.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

Chapters 65 and 251 of S.L. 2009, effective

July 1, 2009, each purported to enact a new chapter 54 in title 54. Accordingly, S.L. 2009, chapter 251 was codified as title 54, chapter 54 while S.L. 2009, chapter 65 was redesignated as title 54, chapter 55 through the use of brackets. The redesignation was made permanent by S.L. 2010, ch. 79.

Section 5 of S.L. 2009, ch. 65 provided "The

provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014.”

Section 37 of S.L. 2010, ch. 79 provided that

§ 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2014.”

54-5502. Definitions. [Null and void, effective July 1, 2014.] — As used in this chapter:

- (1) “Board” means the Idaho state board of midwifery.
- (2) “Bureau” means the Idaho state bureau of occupational licenses.
- (3) “Certified professional midwife” or “CPM” means a person who is certified by the North American registry of midwives or any successor organization.
- (4) “Client” means a woman under the care of a licensed midwife, as well as her fetus and newborn child.
- (5) “Idaho midwifery council” or “IMC” means the professional organization representing midwives in Idaho.
- (6) “Idahoans for midwives [midwifery]” or “IFM” means the Idaho consumer organization that promotes and supports midwifery care in Idaho.
- (7) “Licensed midwife” means a person who holds a current license issued by the board pursuant to the provisions of this chapter to engage in the practice of midwifery, who shall be designated “L.M.”
- (8) “Midwifery education accreditation council” or “MEAC” means the organization established in 1991 and recognized by the U.S. department of education as an accrediting agency for midwifery education programs and institutions.
- (9) “National association of certified professional midwives” or “NACPM” means the national organization for certified professional midwives.
- (10) “NACPM essential documents” means the documents adopted by NACPM that identify the nature of and standards of practice for responsible midwifery practice.
- (11) “North American registry of midwives” or “NARM” means the international certification agency that establishes and administers certification for the CPM credential.
- (12) “Practice of midwifery” means providing maternity care for women and their newborns during the antepartum, intrapartum and postpartum periods. The postpartum period for both maternal and newborn care may not exceed six (6) weeks from the date of delivery.

History.

I.C., § 54-5402, as added by 2009, ch. 65,

§ 1, p. 177; am. and redesign. 2010, ch. 79, § 22, p. 133.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler’s Notes.

The bracketed insertion in subsection (6) was added by the compiler to correct the name of the referenced organization. See http://groups.yahoo.com/group/Idahoans_for_midwifery.

For more on the North American registry of midwives, see <http://narm.org>.

For more on the Idaho midwifery council, see <http://idahomidwives.org>.

For more on the midwifery education accreditation council, see <http://www.meacschools.org>.

For more on the national association of certified professional midwives, see <http://nacpm.org>.

Section 5 of S.L. 2009, ch. 65 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5503. Board of midwifery created. [Null and void, effective July 1, 2014.] — (1) There is hereby established in the department of self-governing agencies, bureau of occupational licenses, a board of midwifery.

(2) The board shall consist of five (5) members appointed by the governor, three (3) of whom shall be licensed pursuant to this chapter, one (1) of whom shall be a licensed physician who is board certified in either obstetrics/gynecology or family medicine, maintains current hospital privileges and has provided primary maternity care for at least twenty (20) births in the twelve (12) months prior to the appointment and one (1) of whom shall be a member of the public with an interest in the rights of consumers of midwifery services.

(3) One (1) member of the initial board shall be appointed for a one (1) year term of office, one (1) member of the initial board shall be appointed for a two (2) year term of office, one (1) member of the initial board shall be appointed for a three (3) year term of office, one (1) member shall be appointed for a four (4) year term of office and one (1) member of the initial board shall be appointed for a five (5) year term of office. Thereafter, the term of office for each board member shall be five (5) years.

(4) In making appointments to the board, the governor's selection shall not be limited to nominations he receives; however, consideration shall be given to recommendations made by the Idaho midwifery council and Idahoans for midwives [midwifery].

(5) The initial three (3) licensed midwife board members shall have at least three (3) years of experience in the practice of midwifery, shall hold current CPM certification and shall be eligible to become licensed pursuant to this chapter.

(6) The three (3) board members who are licensed midwives shall be licensed pursuant to this chapter, shall actively practice midwifery in the state of Idaho for the duration of their appointment and shall have been a practicing midwife in the state of Idaho for at least three (3) years immediately preceding their appointment.

(7) In the event of the death, resignation or removal of any board member before the expiration of the term to which he is appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(8) Board members shall serve at the pleasure of the governor.

(9) Within thirty (30) days after its appointment, the initial board shall hold a meeting and elect a chairperson. The board shall meet at least annually thereafter, and may hold additional meetings at the call of the chairperson or at the written request of any two (2) members of the board.

A majority of the board shall constitute a quorum. The vote of a majority of members present at a meeting wherein a quorum is present shall determine the action of the board.

History.

I.C., § 54-5403, as added by 2009, ch. 65, § 1, p. 177; am. and redesign. 2010, ch. 79, § 23, p. 133.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.
Department of self-governing agencies, § 67-2601 et seq.

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

The bracketed insertion in subsection (4) was added by the compiler to correct the name of the referenced organization. See http://groups.yahoo.com / group / Idaho-ans_for_midwifery.

For more on the Idaho midwifery council, see <http://idahomidwives.org>.

S.L. 2009, ch. 53, § 4 provided "The Board of Midwifery shall report on the status of the board and the practice of licensed midwifery in Idaho to the Second Regular Session of the Sixty-Second Legislature of the state of Idaho, in 2014."

Section 5 of S.L. 2009, ch. 65 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5504. Board of midwifery — Powers and duties. [Null and void, effective July 1, 2014.] — The board shall have the authority and the responsibility to:

(1) Receive applications for licensure, determine the qualifications of persons applying for licensure, provide licenses to applicants qualified under this chapter and renew, suspend, revoke and reinstate licenses;

(2) Establish and collect fees for examination of applicants, for licensure and for renewal of licenses;

(3) Establish the minimum amount and type of continuing education to be required for each licensed midwife seeking renewal of the midwife's license;

(4) Investigate complaints against persons who are licensed under this chapter;

(5) Undertake, when appropriate, disciplinary proceedings and disciplinary action against persons licensed under this chapter;

(6) Promulgate and adopt rules, pursuant to chapter 52, title 67, Idaho Code, necessary to administer this chapter. To the degree they are consistent with this chapter, rules shall be consistent with the current job description for the profession published by NARM and consistent with standards regarding the practice of midwifery established by the NACPM or a successor organization;

(7) Authorize, by written agreement, the bureau of occupational licenses to act as agent in its interest; and

(8) Provide such other services and perform such other functions as are consistent with this chapter and necessary to fulfill its responsibilities.

History. § 1, p. 177; am. and redesign. 2010, ch. 79, I.C., § 54-5404, as added by 2009, ch. 65, § 24, p. 133.

STATUTORY NOTES

Cross References.

Bureau of occupational licenses, § 67-2602.

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

Section 5 of S.L. 2009, ch. 65 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5505. Rulemaking. [Null and void, effective July 1, 2014.] —

(1) The rules adopted by the board shall:

(a) Allow a midwife to obtain and administer, during the practice of midwifery, the following:

- (i) Oxygen;
- (ii) Oxytocin as a postpartum antihemorrhagic agent;
- (iii) Injectable local anesthetic for the repair of lacerations that are no more extensive than second degree;
- (iv) Antibiotics for group b streptococcus prophylaxis consistent with guidelines of the United States centers for disease control and prevention;
- (v) Epinephrine administered via a metered dose auto-injector;
- (vi) Intravenous fluids for stabilization of the woman;
- (vii) Rho(d)immune globulin;
- (viii) Vitamin K; and
- (ix) Eye prophylactics to the baby.

(b) Prohibit the use of other legend drugs, except those of a similar nature and character as determined by the board to be consistent with the practice of midwifery; provided that, at least one hundred twenty (120) days' advance notice of the proposal to allow the use of such drugs is given to the board of pharmacy and the board of medicine and neither board objects to the addition of such drugs to the midwifery formulary;

(c) Define a protocol for use by licensed midwives of drugs approved in paragraphs (a) and (b) of this subsection that shall include methods of obtaining, storing and disposing of such drugs and an indication for use, dosage, route of administration and duration of treatment;

(d) Define a protocol for medical waste disposal; and

(e) Establish scope and practice standards for antepartum, intrapartum, postpartum and newborn care that shall, at a minimum:

(i) Prohibit a licensed midwife from providing care for a client with a history of disorders, diagnoses, conditions or symptoms that include:

1. Placental abnormality;
2. Multiple gestation;
3. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first;
4. Birth under thirty-seven (37) weeks and after forty-two (42) completed weeks' gestational age;

5. A history of more than one (1) prior cesarean section, a cesarean section within eighteen (18) months of the current delivery or any cesarean section that was surgically closed with a classical or vertical uterine incision;
6. Rh or other blood group or platelet sensitization, hematological or coagulation disorders;
7. A body mass index of forty (40.0) or higher at the time of conception;
8. Prior chemotherapy and/or radiation treatment for a malignancy;
9. Previous pre-eclampsia resulting in premature delivery;
10. Cervical insufficiency; or
11. HIV positive status.

(ii) Prohibit a licensed midwife from providing care for a client with a history of the following disorders, diagnoses, conditions or symptoms unless such disorders, diagnoses, conditions or symptoms are being treated, monitored or managed by a physician licensed pursuant to chapter 18, title 54, Idaho Code:

1. Diabetes;
2. Thyroid disease;
3. Epilepsy;
4. Hypertension;
5. Cardiac disease;
6. Pulmonary disease;
7. Renal disease;
8. Gastrointestinal disorders;
9. Previous major surgery of the pulmonary system, cardiovascular system, urinary tract or gastrointestinal tract;
10. Abnormal cervical cytology;
11. Sleep apnea;
12. Previous bariatric surgery;
13. Hepatitis; or
14. History of illegal drug use or excessive prescription drug use.

(iii) Require a licensed midwife to recommend that a client see a physician licensed under chapter 18, title 54, Idaho Code, and to document and maintain a record as required by section 54-5511, Idaho Code, if such client has a history of disorders, diagnoses, conditions or symptoms that include:

1. Previous complicated pregnancy;
2. Previous cesarean section;
3. Previous pregnancy loss in second or third trimester;
4. Previous spontaneous premature labor;
5. Previous pre-term rupture of membranes;
6. Previous pre-eclampsia;
7. Previous hypertensive disease of pregnancy;
8. Parvo;
9. Toxo;
10. CMV;
11. HSV;

12. Previous maternal/newborn group b streptococcus infection;
 13. A body mass index of at least thirty-five (35.0) but less than forty (40.0) at the time of conception;
 14. Underlying family genetic disorders with potential for transmission; or
 15. Psychosocial situations that may complicate pregnancy.
- (iv) Require that a licensed midwife shall facilitate the immediate transfer to a hospital for emergency care for disorders, diagnoses, conditions or symptoms that include:
1. Maternal fever in labor;
 2. Suggestion of fetal jeopardy such as bleeding or meconium or abnormal fetal heart tones;
 3. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first;
 4. Second stage labor after two (2) hours of initiation of pushing when the mother has had a previous cesarean section;
 5. Current spontaneous premature labor;
 6. Current pre-term premature rupture of membranes;
 7. Current pre-eclampsia;
 8. Current hypertensive disease of pregnancy;
 9. Continuous uncontrolled bleeding;
 10. Bleeding which necessitates the administration of more than two (2) doses of oxytocin or other antihemorrhagic agent;
 11. Delivery injuries to the bladder or bowel;
 12. Grand mal seizure;
 13. Uncontrolled vomiting;
 14. Coughing or vomiting of blood;
 15. Severe chest pain; or
 16. Sudden onset of shortness of breath and associated labored breathing.

A transfer of care shall be accompanied by the client's medical record, the licensed midwife's assessment of the client's current condition and a description of the care provided by the licensed midwife prior to transfer;

- (v) Establish a written plan for the emergency transfer and transport required in subparagraph (iv) of this paragraph and for notifying the hospital to which a client will be transferred in the case of an emergency. If a client is transferred in an emergency, the licensed midwife shall notify the hospital when the transfer is initiated and accompany the client to the hospital if feasible, or communicate by telephone with the hospital if unable to be present personally, and shall provide the client's medical record. The record shall include the client's name, address, list of diagnosed medical conditions, list of prescription or over the counter medications regularly taken, history of previous allergic reactions to medications, if feasible the client's current medical condition and description of the care provided by the midwife and next of kin contact information.
- (f) Establish and operate a system of peer review for licensed midwives

that shall include, but not be limited to, the appropriateness, quality, utilization and the ethical performance of midwifery care.

- (2) The rules adopted by the board may not:
 - (a) Require a licensed midwife to have a nursing degree or diploma;
 - (b) Except as a condition imposed by disciplinary proceedings by the board, require a licensed midwife to practice midwifery under the supervision of another health care provider;
 - (c) Except as a condition imposed in disciplinary proceedings by the board, require a licensed midwife to enter into an agreement, written or otherwise, with another health care provider;
 - (d) Limit the location where a licensed midwife may practice midwifery;
 - (e) Allow a licensed midwife to use vacuum extraction or forceps as an aid in the delivery of a newborn;
 - (f) Grant a licensed midwife prescriptive privilege;
 - (g) Allow a licensed midwife to perform abortions.

History. § 1, p. 177; am. and redesign. 2010, ch. 79, I.C., § 54-5405, as added by 2009, ch. 65, § 25, p. 133.

STATUTORY NOTES

Cross References.

Board of medicine, § 54-1805.
Board of pharmacy, § 54-1706.

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

Section 5 of S.L. 2009, ch. 65 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5506. Licensure — Penalty. [Null and void, effective July 1, 2014.] — (1) The board shall grant a license to any person who submits a completed application, pays the required license fee as established by the board and meets the qualifications set forth in section 54-5507, Idaho Code.

(2) All licenses issued under this chapter shall be for a term of one (1) year and shall expire on the birthday of the licensee unless renewed in the manner prescribed by rule. Except as set forth in this chapter, rules governing procedures and conditions for license renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(3) It is a misdemeanor for any person to assume or use the title or designation "licensed midwife," "L.M." or any other title, designation, words, letters, abbreviations, sign, card or device to indicate to the public that such person is licensed to practice midwifery pursuant to this chapter unless such person is so licensed. Any person who pleads guilty to or is found guilty of a second or subsequent offense under this subsection (3) shall be guilty of a felony.

(4) Except as provided in section 54-5508, Idaho Code, on and after July 1, 2010, it shall be a misdemeanor for any person to engage in the practice of midwifery without a license. Any person who pleads guilty to or is found

guilty of a second or subsequent offense under this subsection (4) shall be guilty of a felony.

History. § 1, p. 177; am. and redesign. 2010, ch. 79, I.C., § 54-5406, as added by 2009, ch. 65, § 26, p. 133.

STATUTORY NOTES

Cross References.

Penalty for felony where none prescribed, § 18-112.

Penalty for misdemeanor where none prescribed, § 18-113.

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

Section 5 of S.L. 2009, ch. 65 provided "The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5507. Qualifications for licensure. [Null and void, effective July 1, 2014.] — (1) A person shall be eligible to be licensed as a midwife if the person:

- (a) Provides proof of current certification as a CPM by NARM or a successor organization;
- (b) Files a board approved application for licensure and pays the required fees; and
- (c) Provides documentation of successful completion of board approved MEAC accredited courses in pharmacology, the treatment of shock/IV therapy and suturing specific to midwives.

(2) For any midwife who has been continuously practicing midwifery in Idaho for at least five (5) years prior to July 1, 2009, the qualifications for licensure in subsection (1)(a) of this section may be waived by the board if such midwife provides the following documentation to the board:

- (a) Primary attendance at seventy-five (75) births within the past ten (10) years, ten (10) of which occurred in the two (2) years immediately preceding the application for licensure; and
- (b) In addition to the completion of the courses listed in subsection (1)(c) of this section, successful completion of board approved courses in CPR and neonatal resuscitation; and
- (c) Complete practice data for the two (2) years preceding the application for licensure, on a form provided by the board.

(3) Any midwife who wishes to qualify for the waiver provided in subsection (2) of this section shall apply for licensure and provide the required documentation before July 1, 2010.

History. § 1, p. 177; am. and redesign. 2010, ch. 79, I.C., § 54-5407, as added by 2009, ch. 65, § 27, p. 133.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014.”

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2014.”

Compiler’s Notes.

Section 5 of S.L. 2009, ch. 65 provided “The

54-5508. Exemptions. [Null and void, effective July 1, 2014.] — This chapter shall not apply to any of the following:

(1) Certified nurse midwives authorized under the board of nursing to practice in Idaho, unless a certified nurse midwife chooses to become a licensed midwife. Certified nurse midwives who are licensed midwives shall be subject to the provisions of chapter 14, title 54, Idaho Code, as well as to the provisions of this chapter;

(2) Student midwives in training under the direct supervision of licensed midwives as required by NARM;

(3) A person, in good faith, engaged in the practice of the religious tenets of any church or religious act where no fee is contemplated, charged or received, whose license to practice midwifery has not been revoked and who has not plead guilty to or been found guilty of a felony for a violation of the provisions of section 54-5506, Idaho Code;

(4) A person administering a remedy, diagnostic procedure or advice as specifically directed by a physician;

(5) A person rendering aid in an emergency where no fee for the service is contemplated, charged or received;

(6) A person administering care to a member of such person’s family;

(7) The practice of a profession by individuals who are licensed, certified or registered under other laws of this state and are performing services within the authorized scope of practice.

History.

I.C., § 54-5408, as added by 2009, ch. 65,

§ 1, p. 177; am. and redesign. 2010, ch. 79, § 28, p. 133.

STATUTORY NOTES

Cross References.

Board of nursing, § 54-1403.

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler’s Notes.

Section 5 of S.L. 2009, ch. 65 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014.”

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, “shall be null, void and of no force and effect on and after July 1, 2014.”

54-5509. Fees. [Null and void, effective July 1, 2014.] — (1) All fees received under the provisions of this chapter shall be paid to the department of self-governing agencies, bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account].

All costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund [account]. In no case may any salary, expense or other obligation of the board be charged against the general fund.

(2) The fee for licensure may not exceed one thousand dollars (\$1,000).

History.

I.C., § 54-5409, as added by 2009, ch. 65, § 1, p. 177; am. and redesign. 2010, ch. 79, § 29, p. 133.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

The bracketed insertions were added by the compiler to correct the name of the referenced account. See § 67-2605.

Section 5 of S.L. 2009, ch. 65 provided "The provisions of Section 1 this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5510. Client protection — Unprofessional conduct. [Null and void, effective July 1, 2014.] — A licensed midwife or applicant for licensure, renewal or reinstatement may not:

(1) Disregard a client's dignity or right to privacy as to her person, condition, possessions or medical record;

(2) Breach any legal requirement of confidentiality with respect to a client, unless ordered by a court of law;

(3) Submit a birth certificate known by the person to be false or fraudulent, or willfully make or file false or incomplete reports or records in the practice of midwifery;

(4) Fail to provide information sufficient to allow a client to give fully informed consent;

(5) Engage in the practice of midwifery while impaired because of the use of alcoholic beverages or drugs; and

(6) Violate any other standards of conduct as determined by the board in rules adopted for the regulation of the practice of midwifery.

History.

I.C., § 54-5410, as added by 2009, ch. 65, § 1, p. 177; am. and redesign. 2010, ch. 79, § 30, p. 133.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

Section 5 of S.L. 2009, ch. 65 provided "The

provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5511. Disclosure and recordkeeping — License renewal. [Null and void, effective July 1, 2014.] — (1) Before initiating care, a licensed midwife shall obtain a signed informed consent agreement from each client, acknowledging receipt, at minimum, of the following:

- (a) The licensed midwife's training and experience;
- (b) Instructions for obtaining a copy of the rules adopted by the board pursuant to this chapter;
- (c) Instructions for obtaining a copy of the NACPM essential documents and NARM job description;
- (d) Instructions for filing complaints with the board;
- (e) Notice of whether or not the licensed midwife has professional liability insurance coverage;
- (f) A written protocol for emergencies, including hospital transport that is specific to each individual client;
- (g) A description of the procedures, benefits and risks of home birth, primarily those conditions that may arise during delivery; and
- (h) Any other information required by board rule.

(2) All licensed midwives shall maintain a record of all signed informed consent agreements for each client for a minimum of nine (9) years after the last day of care for such client.

(3) Before providing care for a client who has a history of disorders, diagnoses, conditions or symptoms identified in section 54-5505(1)(e)(ii), Idaho Code, the licensed midwife shall provide written notice to the client that the client shall obtain care from a physician licensed pursuant to chapter 18, title 54, Idaho Code, as a condition to her eligibility to obtain maternity care from the licensed midwife. Before providing care for a client who has a history of disorders, diagnoses, conditions or symptoms identified in section 54-5505(1)(e)(iii), Idaho Code, or who has had a previous cesarean section, the licensed midwife shall provide written notice to the client that the client is advised to consult with a physician licensed pursuant to chapter 18, title 54, Idaho Code, during her pregnancy. The midwife shall obtain the client's signed acknowledgment of receipt of said notice.

(4) Any licensed midwife submitting an application to renew a license shall compile and submit to the board complete practice data for the twelve (12) months immediately preceding the date of the application. Such information shall be provided in form and content as prescribed by rule of the board and shall include, but not be limited to:

- (a) The number of clients to whom care has been provided by the licensed midwife;
- (b) The number of deliveries performed by the licensed midwife;
- (c) The apgar scores of the infants delivered by the licensed midwife;
- (d) The number of prenatal transfers;
- (e) The number of transfers during labor, delivery and immediately following birth;
- (f) Any perinatal deaths; and
- (g) Other morbidity statistics as required by the board.

History.

I.C., § 54-5411, as added by 2009, ch. 65,

§ 1, p. 177; am. and redesign. 2010, ch. 79,
§ 31, p. 133.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

Section 5 of S.L. 2009, ch. 65 provided "The

provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5512. Immune from vicarious liability. [Null and void, effective July 1, 2014.] — No physician, hospital, emergency room personnel, emergency medical technician or ambulance personnel shall be liable in any civil action arising out of any injury resulting from an act or omission of a licensed midwife, even if the health care provider has consulted with or accepted a referral from the licensed midwife. A physician who consults with a licensed midwife but who does not examine or treat a client of the midwife shall not be deemed to have created a physician-patient relationship with such client.

History.

I.C., § 54-5412, as added by 2009, ch. 65,

§ 1, p. 177; am. and redesign. 2010, ch. 79, § 32, p. 133.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

Section 5 of S.L. 2009, ch. 65 provided "The

provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

54-5513. Severability. [Null and void, effective July 1, 2014.] — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 54-5413, as added by 2009, ch. 65,

§ 1, p. 177; am. and redesign. 2010, ch. 79, § 33, p. 133.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 79, redesignated this section and updated any internal references to correct a duplication of section number assignments by two 2009 session laws.

Compiler's Notes.

Section 5 of S.L. 2009, ch. 65 provided "The

provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014."

Section 37 of S.L. 2010, ch. 79 provided that § 21 of that act, amending this section, "shall be null, void and of no force and effect on and after July 1, 2014."

Index

A

ABANDONMENT.

Public works contractors.

- Construction projects abandoned.
- Grounds for suspension or revocation of license, §54-1914.

ABORTIONS.

Naturopathic physicians.

- Prohibited from performing, §54-5105.

Pain-capable unborn child protection act.

- Discipline of physician performing illegal abortion, §54-1814.

Physicians and surgeons.

- Performing or procuring unlawful abortions.
- Grounds for medical discipline, §54-1814.

ABSTRACTERS OF TITLE, §§54-101 to 54-105.

Bonds, surety.

- Additional security, §54-104.
- Amount of bond, §54-101.
- Certificates, §54-102.
- Duration of bond, §54-104.
- Required, §54-101.

Certificates.

- Fees, §54-105.
- Validity, §54-102.

Evidence.

- Use of abstracts in actions, §54-103.

Fees.

- Certificates, §54-105.

Misdemeanors.

- Bonds, surety.
- Failure to file bond, §54-101.

Register of abstracters, §54-105.

Title insurance.

- Use as evidence, §54-103.

Use of abstract, §54-103.

ACCOUNTANTS, §§54-201 to 54-228.

Advisory committee, §§54-204, 54-205.

Appeals.

- Judicial review of final actions of board, §54-224.

Applicability of chapter, §54-226.

ACCOUNTANTS —Cont'd

Attorney general.

- Legal adviser to board, §54-225.

Board of accountancy, §§54-203 to 54-205.

Attorney general.

- Legal advisor to board, §54-225.
- Judicial review of final actions of board, §54-224.

- Powers and duties, §54-204.

- State board of accountancy account, §54-217.

Citation of act, §54-201.

Commissions to obtain clients or for referral, §54-218.

Compensation.

- Commissions and contingent fees, §54-218.

Complaints.

- Injunctions pendente lite, §54-223.

Contingent fees, §54-218.

Continuing education.

- In lieu of license revocation or suspension, §54-219.
- Renewal of license as certified public accountant, §54-211.

Corporations.

- Use of title, §54-220.

Costs.

- Proceedings initiated for violations of chapter, §54-219.

Criminal offenses.

- Violations of chapter generally, §54-222.

Definitions, §54-206.

Education requirements for certified public accountants, §§54-207, 54-208.

Examination as certified public accountant.

- Qualifications for applicants for admission, §54-208.
- Reciprocity requirements, §54-210.

Expenses of proceedings for violations.

- Charged against violator, §54-219.

Experience required for certified public accountants, §54-209.

Fees.

- General fees, §54-212.
- Licensed as certified public accountant, §54-211.

ACCOUNTANTS —Cont'd**Financial statements**, §54-221.**Firm registration**, §54-214.**Foreign reciprocity requirements**, §54-210.**Grandfather clause**, §54-213.**Inapplicability of chapter**, §54-226.**Injunctions**, §54-223.**Judicial review of final actions of board**, §54-224.**Legislative intent**, §54-202.**Licensed as certified public accountant**, §54-211.

Experience required, §54-209.

Fees, §54-211.

Grandfather clause, §54-213.

Inactive status, §54-211.

Reciprocity requirements, §54-210.

Reinstatement from retired or inactive status, §54-211.

Renewals, §54-211.

Retired, §54-211.

Licensed as public accountant.

Grandfather clause, §54-213.

Licenses.

Applications, §54-207.

Educational requirements, §§54-207, 54-208.

Fees, §54-211.

Forms.

Applications, §54-207.

Grandfather clause, §54-213.

Peer review program, §54-211.

Restriction, revocation, suspension or denial, §54-219.

Misdemeanors.

Violations generally, §54-222.

Partnerships.

Use of title, §54-220.

Peer review.

Condition of registration renewal, §54-214.

Ordered as administrative penalty, §54-219.

Required, §54-211.

Penalties.

Administrative penalty, §54-219.

Policy of state, §54-202.**Prosecuting attorneys.**

Prosecution of violations, §54-225.

Qualifications as certified public accountant, §54-208.

Reciprocity requirements, §54-210.

Quality review in lieu of license restriction, revocation, etc., §54-219.**Reciprocity requirements to practice as certified public accountant**, §54-210.**ACCOUNTANTS —Cont'd****Reports**, §54-221.**Service of process.**

Complaints for injunctions pendente lite, §54-223.

Severability of chapter, §54-228.**State board of accountancy account**, §54-217.**Substantial equivalency**, §54-227.**Title.**

Short title, §54-201.

Title or designation use, §54-220.

Venue.

Injunction proceedings, §54-223.

ACCOUNTS AND ACCOUNTING.**Morticians, funeral directors and embalmers.**

Accounting procedure, §54-1121.

Real estate brokers and salespersons.

Trust accounts, §§54-2041 to 54-2046.

ACTIONS.**Barber colleges.**

Student's action on college's bond.

Failure of college to comply with conditions, §54-507.

Boxing, sparring and wrestling.

Failure to pay delinquent tax.

Collection by attorney general by civil action, §54-419.

Chiropractors.

Unlawful practice, §54-705.

Construction contractors.

Unregistered contractors barred from bringing lawsuits, §54-5217.

Contractors.

Public contracts bond act.

Suits on public works contractor's payment bond, §54-1927.

Dentists.

Peer review committees.

Civil actions.

Immunity from, §54-934.

Pharmacists and pharmacies.

Burden of proof.

Actions for enforcement of chapter, §54-1737.

Plumbing and plumbers.

Attorney general or prosecuting attorneys.

Representation in actions of proceedings under act, §54-2629.

Board, §54-2607.

Division of building safety, administrator, §54-2607.

ACTIONS —Cont'd**Public works contractors.**

Public contracts bond act.

Suit on contractor's payment bond,
§54-1927.**Real estate brokers and
salespersons.**

Collection of compensation, §54-2054.

Veterinarians.Injunction of practice without license
or temporary permit, §54-2118.**ACTUARIES.****Accountants generally, §§54-201 to
54-228.****ACUPUNCTURE, §§54-4701 to
54-4713.****Board of acupuncture.**

Established, §54-4704.

Fund, §54-4705.

Powers and duties, §54-4705.

Certification.

Expiration, §54-4710.

Fees established by board, §54-4710.

Qualifications for, §54-4707.

Reinstatement, §54-4710.

Renewal, §54-4710.

Required, §54-4703.

Revocation or suspension, §54-4711.

Technicians.

Retention, renewal, new
certificates, issuance
prohibited, §54-4708A.**Definitions, §54-4702.****False representation.**Person holds license, certification,
permit, §54-4713.**Injunctions.**

Violations of provisions, §54-4713.

Legislative declaration, §54-4701.**Licenses.**

Expiration, §54-4710.

Fees established by board, §54-4710.

Qualifications for licensure, §54-4706.

Waiver of requirements, §54-4709.

Reinstatement, §54-4710.

Renewal, §54-4710.

Required, §54-4703.

Revocation or suspension, §54-4711.

Penalties for violations, §54-4713.**Permits.**

Trainees, §54-4708.

Expiration, renewal,
reinstatement, fees, §54-4710.
Suspension and revocation,
§54-4711.**Practice in violation of chapter.**

Injunction, §54-4713.

ACUPUNCTURE —Cont'd**Practice of acupuncture.**

Defined, §54-4702.

License required, §54-4703.

Purpose of provisions, §54-4701.**Reciprocity.**

Licensure, §54-4709.

Technicians.

Certification, §54-4708A.

Titles.Restriction on use of certain titles,
§54-4712.**Trainees.**

Permits, §54-4708.

Expiration, renewal,
reinstatement, fees, §54-4710.Suspension and revocation,
§54-4711.Practice on supervised, limited basis,
§54-4703.

Title, use, restrictions, §54-4712.

ADVERTISING.**Barbers.**

Barber colleges, §54-507.

Cemetery merchandise or services.Prepaid cemetery merchandise or
services, §54-1136.**Chiropractors.**Unethical, unprofessional or
misleading advertisements.Grounds for suspension or
revocation of license, §54-712.**Funeral merchandise or services.**Prepaid funeral merchandise or
services, §54-1136.**Grape growers and wine producers
commission.**

Duty of commission, §54-3606.

Massage therapists.

Restrictions, §54-4005.

**Morticians, funeral directors and
embalmers.**

False or misleading advertising.

Grounds for denial, suspension or
revocation of licenses,
§54-1116.Prepaid funeral or cemetery
merchandise or services,
§54-1136.**Optometrists.**

Making unapproved advertising.

Grounds for revocation of license,
§54-1510.**Pharmacists and pharmacies.**Grounds for medical discipline,
§54-1814.**Real estate brokers and****salespersons, §54-2053.**

ADVERTISING —Cont'd**Veterinarians.**

Emergency veterinary facilities,
§54-2106.

False or misleading advertising.

Grounds for revocation or
suspension of license,
§54-2113.

On-call emergency services,
§54-2106.

AFFIDAVITS.**Barbers.**

False affidavit as perjury, §54-520.

Cosmeticians.

False statements and affidavit
perjury, §54-820.

AGENTS.

Student athlete agents, §§54-4801 to
54-4820.

AGRICULTURE.**Boards and commissions.**

Grape growers and wine producers
commission, §§54-3601 to
54-3612.

Construction contractors.

Persons erecting an agriculture
building.

Exemption from act, §54-5205.

**Grape growers and wine producers
commission,** §§54-3601 to
54-3612.

AIR CONDITIONING.

Contractors, §§54-5001 to 54-5024.

ALCOHOLIC BEVERAGES.**Boards and commissions.**

Grape growers and wine producers
commission, §§54-3601 to
54-3612.

**Health professional peer entity
assistance,** §§54-4401 to 54-4407.

Optometrists.

Habitual or excessive use or abuse of
alcohol.

Grounds for revocation of license,
§54-1510.

Physical therapists.

Habitually drunk therapists.
Grounds for revocation or
suspension of certificate,
§54-2214.

Podiatrists.

Licenses.
Grounds for suspension or
revocation, §54-608.

ALTERNATIVE MEDICINE.

Acupuncture, §§54-4701 to 54-4713.

ALTERNATIVE MEDICINE —Cont'd

Naturopathic physicians, §§54-5101
to 54-5118.

AMATEUR SPORTING EVENTS.**Boxing, sparring and wrestling.**

Exemption of events promoted on
nonprofit basis or for charitable
purposes, §54-406.

AMBULANCES.**Boxing, sparring and wrestling.**

Medical emergency requirements,
§54-421.

ANATOMICAL GIFTS.**Morticians, funeral directors and
embalmers.**

Interference with right to make
anatomical gift, §54-1118.

ANESTHETICS.**Naturopathic physicians.**

General or spinal anesthetics.
Prohibited from using, §54-5105.

ANIMALS.**Health.**

Veterinarians, §§54-2101 to 54-2121.

Horses.

Racing, §§54-2501 to 54-2517.

Racing, §§54-2501 to 54-2517.

Veterinarians, §§54-2101 to 54-2121.

ANTI-SEIZURE MEDICATION.

**Notification of drug product
selection for epilepsy and
seizure drugs,** §54-1770.

APPEALS.**Accountants.**

Judicial review of final actions of
board, §54-224.

Architects.

Licenses.
Revocation and suspension,
§54-305.

Barbers.

Persons aggrieved by action of board,
§54-530.

Cosmeticians.

Persons aggrieved by action of board
in denying, suspending or
revoking license, §54-835.

Dentures.

Freedom of choice of dentures act.
Judicial review of board action,
§54-3321.

Engineers.

Persons aggrieved by actions of
board, §54-1225.

APPEALS —Cont'd**Landscape architects.**

Orders of board suspending or
revoking registration, §54-3004.

**Morticians, funeral directors and
embalmers.**

Judicial review of denial, suspension
or revocation of license, §54-1117.

Nurses.

Disciplinary action, §54-1413.

Nursing home administrators.

Judicial review of board actions,
§54-1614.

Physicians and surgeons.

Disabled physicians.

Judicial review of final decisions of
board, §54-1839.

Podiatrists.

Judicial review of license revocation
or suspension, §54-611.

Public works contractors.

Judicial review for decision,
§54-1916.

**Residential care facility
administrators.**

Board rulings, §54-4215.

Shorthand reporters.

Action by board, §54-3114.

**Speech and hearing services
practitioners.**

Disciplinary action against licensees.
Judicial review of adverse agency
action, §54-2926.

Surveys and surveyors.

Persons aggrieved by action of board,
§54-1225.

Veterinarians.

Disciplinary action against licensee,
§54-2116.

APPRAISALS AND APPRAISERS.**Real estate appraisers, §§54-4101 to
54-4119.****APPRENTICES.****Electrical contractors and
journeymen.**

Definition of apprentice, §54-1003A.
Registration, §54-1010.
Duration, §54-1008.

**Heating, ventilation and air
conditioning contractors.**

Competency, §54-5009.

Registration.

Certificate carried on job, §54-5014.

Required, fee, §54-5012.

Plumbing and plumbers.

Classification of competency,
§54-2611.

APPRENTICES —Cont'd**Plumbing and plumbers —Cont'd**

Registration and renewal, §54-2614A.

ARCHITECTS, §§54-301 to 54-316.**Appeals.**

Licenses.

Revocation and suspension,
§54-305.

Application of chapter, §54-309.**Board of architectural examiners.**

Appointment of members, §54-312.

Compensation of members, §54-312.

Continuance of present board,
§54-313.

Created, §54-312.

Examinations conducted by board,
§54-303.

Filling vacancies, §54-314.

Injunctions, §54-315.

Members, §54-312.

Powers and duties, §54-312.

Qualification of members, §54-312.

Term of office of members, §54-313.

Vacancies, §54-313.

Filling vacancies, §54-314.

Buildings.

Defined, §54-309.

Construction and interpretation.

Separability of provisions, §54-311.

Copies.

Licenses.

Certified copies as evidence,
§54-306.

Corporations.

Corporate practice, §54-316.

Foreign corporate practice, §54-316.

Criminal offenses, §54-310.

Grounds for revocation and
suspension of licenses, §54-305.

Definitions, §54-309.**Disciplinary grounds, §54-305.****Disciplinary powers.**

Board of examiners, §54-312.

Evidence.

Licenses.

Certified copies as evidence,
§54-306.

Examinations.

Board of architectural examiners.

Examinations conducted by board,
§54-303.

Licenses.

Required for license, §54-301.

Qualifications, §54-302.

Regular examinations, §54-303.

Fees.

Licenses, §54-304.

ARCHITECTS —Cont'd

Fraud.

Licenses.

Grounds for revocation and suspension, §54-305.

Indorsements.

License by indorsement, §54-302A.

Injunctions.

Board of architectural examiners.

Procedure for injunctions, §54-315.

Internships, §54-302.

Landscape architects.

Registration and licensing, §§54-3001 to 54-3005.

Licenses.

Appeals.

Revocation and suspension, §54-305.

Applications.

Limitation on application, §54-309.

Certified copies as evidence, §54-306.

Examinations.

Required for license, §54-301.

Expiration, §54-304.

Fees, §54-304.

Firm name, §54-307.

Individual licenses, §54-307.

Indorsement, §54-302A.

Issuance, §54-304.

Practicing without license.

Grounds for revocation and suspension of license, §54-305.

Qualifications, §54-302.

Reinstatement of expired license, §54-304.

Renewal, §54-304.

Revocation and suspension, §54-305.

Seals, §54-308.

Misdemeanors, §54-310.

Names.

Licenses.

Firm name, §54-307.

Partnerships.

Foreign partnership practice, §54-316.

Practice of architecture.

Defined, §54-309.

Qualifications, §54-302.

Records.

Technical submissions, §54-308.

Responsible control.

Defined, §54-309.

Seals and sealed instruments.

Licensed architect's seal, §54-308.

Separability of provisions, §54-311.

Subpoenas.

Power of board of examiners to issue, §54-312.

ARCHITECTS —Cont'd

Technical submissions.

Defined, §54-309.

Signing and sealing, §54-308.

Temporary practice, §54-302A.

Violations.

Grounds for revocation and suspension of licenses, §54-305.

ASSESSMENTS.

Health professional peer entity assistance, §54-4402.

ASSISTED LIVING FACILITIES.

Administrators of residential care facilities, §§54-4201 to 54-4216.

ASSOCIATIONS.

Real estate appraisers.

Use of term "state licensed or certified real estate appraiser," §54-4111.

ATHLETE AGENTS.

Student athlete agents, §§54-4801 to 54-4820.

ATHLETICS.

Boxing, sparring and wrestling, §§54-401 to 54-422.

Trainers.

Athletic trainers generally, §§54-3901 to 54-3917.

ATHLETIC TRAINERS, §§54-3901 to 54-3917.

Board of athletic trainers.

Compensation, §54-3914.

Created, §54-3912.

Executive director, §54-3915.

Members, appointment, qualifications, meetings, §54-3912.

Part of state board of medicine, §54-3912.

Powers and duties, §54-3913.

Board of medicine.

Administrative provisions, §54-3915.

Powers and duties, §54-3913.

Changes in personal information.

Reporting, §54-3910.

Construction and interpretation.

Intent of legislature, §54-3901.

Costs and expenses incurred by boards, §54-3915.

Criminal penalties for violations, §54-3916.

Definitions, §54-3902.

Denial of license, §54-3909.

Grounds, procedure, §54-3911.

Direction of licensed physician.

Scope of practice under, §54-3903.

ATHLETIC TRAINERS —Cont'd

Exceptions to license requirement, §54-3905.

Fees for licenses.

Adoption of rules, §54-3907.

Deposit in state board of medicine account, §54-3915.

Independent practice, §54-3903.

Individuals only may be licensed, §54-3904.

Intent of legislature, §54-3901.

Issuance of license, §54-3909.

Legislative intent, §54-3901.

License required to practice, §54-3904.

Provisional license, §54-3908.

Qualifications for licensure, §54-3906.

Referral by directing physician, §54-3903.

Reinstatement, §54-3910.

Renewal, §54-3910.

Refusal, §54-3909.

Grounds, procedure, §54-3911.

Scope of practice, §54-3903.

Severability of provision, §54-3917.

Suspension or revocation.

Grounds, procedure, §54-3911.

Term of license, §54-3910.

Use of title, §54-3904.

ATTORNEY GENERAL.**Accountants.**

Legal adviser to board, §54-225.

Boxing, sparring and wrestling.

Enjoining events conducted without license, §54-420.

Failure to pay delinquent tax.

Collection by civil action, §54-419.

Construction contractors.

Legal counsel in actions and proceedings, §54-5218.

Cosmeticians.

Board of cosmetology.

Legal adviser to board, §54-836.

Engineers.

Board of licensure.

Legal counsel for board, §54-1222.

Geologists.

Legal counsel for board, §54-2821.

Heating, ventilation and air conditioning contractors.

Representation of division of building safety, §54-5023.

Optometrists.

Violations.

Duty to prosecute, §54-1513.

ATTORNEY GENERAL —Cont'd**Plumbing and plumbers.**

Actions and proceedings involving questions under act, §54-2629.

Representation by attorney general, §54-2629.

Public works contractors.

Prosecution of civil actions against, §54-1920A.

Shorthand reporters.

Hearings on violations.

Attorney general chairman of hearing board, §54-3113.

Social workers.

Duties under act, §54-3216.

Surveyors.

Board of licensure.

Legal counsel for board, §54-1222.

Veterinarians.

Duty to represent board, §54-2120.

ATTORNEYS AT LAW.

Lawyer assistance program, §§54-4901, 54-4902.

ATTORNEYS' FEES.**Chiropractors.**

Imposition of administrative fines, §54-713.

Unlawful practice, §54-705.

Physicians and surgeons.

Actions for unlicensed practice, §54-1804.

Public works contractors.

Public contracts bond act.

Actions brought on bonds, §54-1929.

Real estate brokers and salespersons.

Actions on bonds.

Attorneys' fees allowed, §54-1929.

Speech and hearing services practitioners.

Disciplinary action against licensees, §54-2925.

AUDIOLOGISTS.**Speech and hearing services practitioners.**

Generally, §§54-2901 to 54-2927.

AUDITS AND AUDITORS.**Real estate brokers and salespersons.**

Investigatory powers of commission, §54-2058.

AUTOPSIES.

Authorization by decedent, §54-1142.

AUTOPSIES —Cont'd**Physicians and surgeons.**

Consent for examination, §54-1817.

B**BANKRUPTCY AND INSOLVENCY.****Public works contractors.**

Filing voluntary petition in bankruptcy.

Grounds for disciplinary proceedings, §54-1914.

BARBERS, §§54-501 to 54-530.**Advertisements.**

Barber colleges, §54-507.

Affidavits.

False affidavit as perjury, §54-520.

Appeals.

Persons aggrieved by action of board, §54-530.

Barber colleges.

Action by student on bond.

Failure of college to comply with conditions, §54-507.

Advertisements, §54-507.

Approved colleges, §54-507.

Bonds, surety, §54-507.

Courses, §54-507.

Fees, §54-518.

Instructors.

Licenses, §54-507.

Performance of services limited to licensed shops, schools or colleges, §54-513.

Renewal of certificate, §54-507.

Requirements, §54-507.

School hours, §54-507.

Barber poles, §54-523.**Barber shops.**

Inspection, §54-524.

Licenses, §54-501.

Barber-stylist instructor.

License qualifications, §54-506.

Board of barber examiners,

§§54-821, 54-822.

Appeals.

Persons aggrieved by action of board, §54-530.

Powers and duties, §54-521.

Bonds, surety.

Barber colleges, §54-507.

Citation of chapter, §54-526.**Construction and interpretation.**

Separability of provisions, §54-525.

Cosmeticians.

Persons exempt from chapter, §54-504.

BARBERS —Cont'd**Criminal offenses.**

Prohibited acts, §54-519.

Definitions.

Practice, §54-502.

Examinations.

Applicants, §54-509.

Areas covered on exam, §54-510.

Persons having practiced in another state or country.

Examination may be required, §54-512.

Exemptions from chapter, §54-504.**Fees.**

Barber colleges, §54-518.

Certificate of registration, §54-518.

Fines.

Prohibited acts, §54-519.

Hearings.

Licenses.

Refusal to issue, revocation or suspension, §54-517.

Instructors.

License qualifications, §54-506.

Judicial review of final action of board, §54-530.**Licenses.**

Appeals.

Orders of board denying, suspending or revoking, §54-530.

Barbershop licenses.

Required, §54-501.

Change of address.

Notification of board, §54-501.

Display of license, §54-514.

Expiration.

Failure to renew, §54-515.

Fees, §54-518.

Issuance, §54-511.

Penalties, §54-519.

Performance of services limited to licensed shops, schools or colleges, §54-513.

Persons having practiced in another state or country, §54-512.

Qualifications, §54-506.

Refusal, revocation or suspension, §54-516.

Hearing, §54-517.

Reinstatement of expired license, §54-515.

Renewal, §54-515.

Misdemeanors.

Prohibited acts, §54-519.

Nurses.

Persons exempt from chapter, §54-504.

BARBERS —Cont'd**Oaths.**

False affidavit as perjury, §54-520.

Penalties.

Prohibited acts, §54-519.

Performance of services limited to licensed shops, schools or colleges, §54-513.**Perjury.**

False affidavits, §54-520.

Practice.

Defined, §54-502.

Persons having practiced in another state or country, §54-512.

Records.

Board of barber examiners.

Public record for licenses, §54-522.

Registration.**Appeals.**

Orders of board denying, suspending or revoking certificate, §54-530.

Fees, §54-518.

Issuance of certificate, §54-511.

Persons having practiced in another state or country, §54-512.

Required, §54-501.

Renewal of licenses, §54-515.**Rules and regulations.**

Inspection rules, §54-524.

Separability of provisions, §54-525.**Short title, §54-526.****Title or designation.**

Use, §54-523.

Unlicensed practice, §54-513.**Violations.**

Prohibited acts, §54-519.

BIDS AND BIDDING.**Public works contractors.**

Accepting bids without license, §54-1902.

BOARDS AND COMMISSIONS.**Acupuncture.**

Board of acupuncture, §§54-4704, 54-4705.

Athletic trainers.

Board of athletic trainers, §§54-3912 to 54-3915.

Certified shorthand reporters board, §§54-3105 to 54-3107.**Contractors.**

Idaho contractors board, §§54-5206, 54-5207.

Dentists.

State board of dentistry, §§54-907 to 54-913.

BOARDS AND COMMISSIONS**—Cont'd****Grape growers and wine producers commission, §§54-3601 to 54-3612.****Heating, ventilation and air conditioning board, §§54-5004, 54-5005.****Idaho contractors board, §§54-5206, 54-5207.****Massage therapy.**

Established, §54-4006.

Powers and duties, §54-4007.

Midwives.

Board of midwifery, §§54-5503 to 54-5506.

Naturopathic physicians.

Board of naturopathic medical examiners, §§54-5108, 54-5109.

Nurses.

Board of nursing, §§54-1403 to 54-1405.

Optometrists.

State board of optometry, §§54-1503, 54-1508, 54-1509.

Podiatrists.

State board of podiatry, §§54-604, 54-605.

Psychologists.

Board of psychologist examiners, §§54-2304, 54-2305.

Social workers.

State board of social work examiners, §§54-3203, 54-3204.

Surveys and surveyors.

Board of professional engineers and land surveyors, §§54-1203 to 54-1210.

Water and wastewater

professionals, §54-2404.

Wine producers commission,

§§54-3601 to 54-3612.

BONDS, SURETY.**Abstracters of title.**

Additional security, §54-104.

Amount of bond, §54-101.

Certificates, §54-102.

Duration of bond, §54-104.

Required, §54-101.

Barbers.

Barber colleges, §54-507.

Boxing, sparring and wrestling.

Promoters, §54-408.

Closed circuit telecasts.

Boxing, sparring or wrestling events.

Promoters, §54-408.

Construction management licensing.

Requirement of bond, §54-4512.

BONDS, SURETY —Cont'd**Contractors.**

Public contracts bond act, §§54-1925 to 54-1930.

Cosmetology schools, §54-808.**Grape growers and wine producers commission.**

Administrators, agents or employees appointed by commission, §54-3608.

Costs of bond administrative expense, §54-3608.

Heating, ventilation and air conditioning contractors, §54-5007.**Payment bond provisions.**

Public contracts bond act, §§54-1925 to 54-1930.

Public works contractors.

Judicial review of board decisions, §54-1916.

Public contracts bond act, §§54-1925 to 54-1930.

Racing.

Required, §54-2517.

Television.

Closed circuit telecasts of boxing, sparring or wrestling events.

Promoters, §54-408.

BOXING, SPARRING AND

WRESTLING, §§54-401 to 54-422.

Actions.

Failure to pay delinquent tax.

Collection by attorney general by civil action, §54-419.

Amateur events.

Exemption of events promoted on nonprofit basis or for charitable purposes, §54-406.

Ambulances.

Medical emergency requirements, §54-421.

Athletic trainers.

General provisions, §§54-3901 to 54-3917.

Attendance of physician at contest, match or exhibition, §54-415.**Attorney general.**

Enjoining events conducted without license, §54-420.

Failure to pay delinquent tax.

Collection by civil action, §54-419.

Bonds, surety.

Promoters, §54-408.

Bouts.

Limitations, §54-414.

Boxing defined, §54-402.**BOXING, SPARRING AND**

WRESTLING —Cont'd

Charities.

Exemption of amateur events promoted for charitable purposes, §54-406.

Clean and sportsmanlike conduct.

Rules and regulations, §54-414.

Closed circuit telecasts.

Bond of promoter, §54-408.

Permits, §54-405.

Reports, §54-413.

Tax on gross receipts, §54-413.

Complimentary tickets.

Limitations on, §54-411.

Conducting events without license.

Injunctions, §54-420.

Definitions, §54-402.**Emergencies.**

Medical emergency requirements, §54-421.

Examination of books and records.

Failure to make required reports, §54-419.

Examination of combatants,

§54-415.

Exempted organizations and entities, §54-406.**Fees for sanctioning organizations, §54-406.****Financial security.**

Promoters, §54-408.

Forfeiture of licenses.

Failure to pay delinquent tax, §54-419.

Sham contests or exhibitions, §54-417.

Gross receipts.

Tax paid by promoter, §54-411.

Simultaneous or closed circuit telecasts, §54-413.

Health insurance.

Promoters required to obtain, §54-408.

Injunctions.

Conducting events without license, §54-420.

Insurance.

Promoters required to obtain health insurance, §54-408.

Licenses.

Annual licenses, §54-416.

Conducting events without license.

Injunctions, §54-420.

Delinquent tax.

Forfeiture and disqualification from new license, §54-419.

BOXING, SPARRING AND WRESTLING —Cont'd

Licenses —Cont'd

Disqualification from receiving new license.

Failure to pay delinquent tax, §54-419.

Forfeiture.

Conducting sham events and participation in purse, §54-417.

Failure to pay delinquent tax, §54-419.

Issuance, §54-410.

Purses.

Forfeiture for participation in, §54-417.

Required, §54-416.

Revocation, §54-416.

Sham events.

Forfeiture, §54-417.

Medical emergency requirements, §54-421.

National or world championships. Rounds, §54-414.

Paramedics.

Medical emergencies.

Paramedical units required to be present at arena, §54-421.

Penalties.

Conducting events without license, §54-420.

Failure to pay delinquent tax, §54-419.

Sham contests or exhibitions, §54-418.

Violations of rules, §54-418.

Permits.

Considerations before issuance, §54-409.

Issuance, §54-410.

Powers of athletic commission, §§54-405, 54-406.

Simultaneous telecasts or closed circuit telecasts, §54-405.

Bond of promoter, §54-408.

Physicians and surgeons.

Attendance and examination of combatants, §54-415.

Charitable or exempt contests, §54-406.

Promoters.

Bond, §54-408.

Defined, §54-402.

Initial event tax, §54-411.

Medical emergency requirements, §54-421.

Referees for wrestling exhibitions or shows.

Provided by promoters, §54-416.

BOXING, SPARRING AND WRESTLING —Cont'd

Promoters —Cont'd

Security personnel.

Responsibility, §54-422.

Statement and report of event, §54-411.

Tax on gross receipts, §§54-411, 54-413.

Termination of contest or exhibition. Reports, §54-411.

Prosecuting attorneys.

Enjoining events conducted without license, §54-420.

Purses.

Forfeiture of license for participation in, §54-417.

Referees.

Boxing contests designated by athletic commission, §54-416.

Wrestling exhibitions or shows.

Provided by promoters, §54-416.

Reports.

Failure to make or unsatisfactory reports, §54-419.

Promoter's statements and reports of event, §54-411.

Simultaneous or closed circuit telecasts, §54-413.

Rounds, §54-414.

Rules and regulations.

Suspension from participating in contests for violations, §54-418.

Schools.

Exemption of events conducted by, §54-406.

Physician to examine contestants, §54-406.

Security personnel in attendance, §54-422.

Sham contests or exhibitions.

Forfeiture of license, §54-417.

Suspension from participating in contests, §54-418.

Simultaneous telecasts.

Bond of promoter, §54-408.

Permits, §54-405.

Reports, §54-413.

Tax on gross receipts, §54-413.

State athletic commission.

Administration.

State athletic commissioner, §54-401.

Commission defined, §54-402.

Compensation of officers, employees and inspectors, §54-403.

Created, §54-401.

Deputy commissioners, §54-403.

BOXING, SPARRING AND WRESTLING —Cont'd**State athletic commission —Cont'd**

- Disposition of funds received, §54-412.
- Duties, §54-406.
- Employees, §54-403.
- Established in department of self-governing agencies, §54-401.
- Examination of books and records.
 - Failure of licensee to make reports, §54-419.
- Examining physicians.
 - Selection, §54-415.
- Inspectors.
 - Appointment, §54-403.
- Licenses.
 - Granting annual licenses, §54-416.
 - Revoking, §54-416.
- Oaths.
 - Power of employees to administer, §54-404.
- Permits.
 - Powers, §§54-405, 54-406.
- Powers generally, §54-406.
- Records, §54-404.
- Service of summons, §54-404.
- State athletic commissioner.
 - Appointment by governor, §54-401.
 - Commission administered by, §54-401.
 - Compensation, §54-401.
 - Removal by governor, §54-401.
 - Term of office, §54-401.
- Summons of witnesses.
 - Power, §54-404.
- Statement and report of event.**
 - Promoters, §54-411.
- State or regional championships,** §54-414.
- Stopping of contest.**
 - Authority of physician, §54-415.
- Subpoenas.**
 - Determination of total gross receipts from contest and tax thereon, §54-419.
- Suspension from participating in contests.**
 - Violations of rules or sham contests, §54-418.
- Taxation.**
 - Failure to pay delinquent tax.
 - Forfeiture of license and disqualification from receiving new license, §54-419.
 - Gross receipts, §54-411.
 - Simultaneous or closed circuit telecasts, §54-413.

BOXING, SPARRING AND WRESTLING —Cont'd**Taxation —Cont'd**

- Initial event tax, §54-411.
- Notice of additional tax due, §54-419.

Television.

- Simultaneous telecasts or closed circuit telecasts.
 - Bond of promoter, §54-408.
- Permits, §54-405.
- Reports, §54-413.
- Tax on gross receipts, §54-413.

Termination of contest or exhibition.

- Report by promoter, §54-411.

Tickets.

- Complimentary tickets limitation, §54-411.
- Report of promoter, §54-411.

Time between boxing contests, §54-407.**Time limit on rounds,** §54-414.**Universities and colleges.**

- Exemption of events conducted by, §54-406.

BROKERS.**Real estate brokers and**

- salespersons,** §§54-2001 to 54-2097.

BUILDINGS.**Architects.**

- Defined, §54-309.

Cosmeticians.

- Cosmetological establishments located in buildings containing living quarters, §54-803.

Public works contractors.

- Wilful or deliberate disregard and violation of building laws.
- Grounds for disciplinary proceedings, §54-1914.

BURDEN OF PROOF.**Chiropractors.**

- Provider of unlawful practices, §54-705.

Pharmacists and pharmacies.

- Actions for enforcement of chapter, §54-1737.

Physicians and surgeons.

- Provider of unlawful services, §54-1804.

BURIAL.**Morticians, funeral directors and embalmers,** §§54-1101 to 54-1144.**BUSINESSES.****Professions, vocations and**

- businesses,** §§54-101 to 54-5513.

C**CAPPERS.****Optometrists.**

Employment or use as ground for
license revocation, §54-1510.

CASKET MANUFACTURERS.**Morticians, funeral directors and embalmers.**

Wholesalers and jobbers exempt from
provisions of act, §54-1104.

CEASE AND DESIST ORDERS.**Real estate brokers and salespersons.**

Violations of provisions, §54-2067.

CEMETERIES.**Board of cemeterians.**

Established, §54-3801.

Licenses.

Fees, §54-3803.

Powers and duties, §54-3802.

Revocation or suspension of license.

Grounds, §54-3804.

Procedure, §54-3805.

Merchandise.

Prepaid funeral or cemetery
merchandise or services,
§§54-1129 to 54-1138.

Morticians, funeral directors and embalmers, §§54-1101 to 54-1144.**Prepaid funeral or cemetery merchandise or services, §§54-1129 to 54-1138.****Services.**

Prepaid funeral or cemetery
merchandise or services,
§§54-1129 to 54-1138.

CERTIFIED MEDICATION ASSISTANTS, §54-1406A.**CERTIFIED PUBLIC ACCOUNTANTS.**

Generally, §§54-201 to 54-228.

CERTIFIED SHORTHAND REPORTERS.

General provisions, §§54-3101 to
54-3118.

CHARITIES.**Boxing, sparring and wrestling.**

Exemption of amateur events
promoted for charitable
purposes, §54-406.

CHEMICAL DEPENDENCY.

Health professional peer entity
assistance, §§54-4401 to 54-4407.

CHILDREN AND MINORS.**Racing.**

Using pari-mutuel system.

Unlawful, §54-2512.

Speech and hearing services practitioners.

Hearing aid dealers and fitters.

Medical certification requirements,
§54-2906.

CHIROPRACTORS, §§54-701 to 54-715.**Actions.**

Unlawful practice, §54-705.

Adjustment.

Chiropractic practice, §54-704.

Advertising.

Unethical, unprofessional or
misleading advertisements.

Grounds for suspension or
revocation of license, §54-712.

Attorneys' fees.

Imposition of administrative fines,
§54-713.

Unlawful practice, §54-705.

Burden of proof.

Provider of unlawful practices,
§54-705.

Censure or reprimand of offenders, §54-713.**Chiropractic practice act.**

Short title, §54-701.

Citation of act, §54-701.**Costs.**

Imposition of administrative fines,
§54-713.

Unlawful practice, §54-705.

Criminal offenses.

Practice without a license, §54-705.

Damages.

Unlawful practice, §54-705.

Definitions, §§54-703, 54-704.**Diseases.**

Communicable, contagious or
infectious disease endangering
health of patients.

Grounds for suspension or
revocation of license, §54-712.

Compliance with regulations relating
to control of contagious and
infectious diseases, §54-714.

Examinations.

Failure to pass examination, §54-709.

Personal interview by board, §54-709.

Required, §54-709.

Fees.

Licenses, §54-708.

Examinations, §54-709.

CHIROPRACTORS —Cont'd**Fees —Cont'd**

Licenses —Cont'd

Indorsement, §54-710.

Felonies.

Suspension or revocation of license.

Grounds, §54-712.

Fines.Administrative fine for discipline,
§54-713.

Unlicensed practice, §54-705.

Fraud.

Licenses.

Suspension or revocation of license.

Grounds, §54-712.

Immunities.

Peer review committee, §54-715.

Indorsements.

Licensure by indorsement, §54-710.

Legislative intent, §54-702.**Licenses.**

Denial.

Notice, §54-708.

Examinations.

Licensure by written examination,
§54-709.

Expiration, §54-708.

Fees, §54-708.

Examinations, §54-709.

Indorsement, §54-710.

Inactive license, §54-708.

Indorsement, §54-710.

Issuance, §54-708.

Notice.

Denial, §54-708.

Refusal to issue, §54-708.

Reinstatement of expired license,
§54-708.

Renewal, §54-708.

Restrictions, §54-713.

Suspension or revocation.

Grounds, §54-712.

Penalties, §54-713.

Reinstatement, §54-713.

Unlicensed practice, §54-705.

Exceptions, §54-705.

Manipulation.

Chiropractic practice, §54-704.

Massage therapy.

Chiropractic practice, §54-704.

Misdemeanors.

Practice without a license, §54-705.

Naturopathic physicians.Prohibited from performing
chiropractic adjustments,
§54-5105.**CHIROPRACTORS —Cont'd****Negligence.**

Unlawful services.

Rendition as prima facie evidence
of negligence, §54-705.**Peer entity assistance, §§54-4401 to
54-4407.****Peer review committee, §54-715.****Permits, §54-711.****Petitions.**

Reinstatement of license, §54-713.

Physicians and surgeons.Chiropractic practice and procedures
which may be employed by
physicians, §54-704.**Practice of chiropractic.**

Defined, §54-703.

Practices and procedures which may
be employed by physicians,
§54-704.

Temporary practice, §54-711.

Unlicensed practice, §54-705.

Exceptions, §54-705.

Probation of offenders, §54-713.**Public health laws.**

Observation, §54-714.

Purpose of article, §54-702.**Reciprocity.**

Licensure by indorsement, §54-710.

Restitution.Reimbursement for losses suffered by
patient, §54-713.**Short title, §54-701.****State board of chiropractic
physicians.**

Created, §54-706.

Discipline by board, §54-712.

Duties and powers, §54-707.

Interviews by board, §54-709.

Licenses.

Issuance, §54-708.

Members, §54-706.

Peer review committee, §54-715.

Powers and duties, §54-707.

Removal of members, §54-706.

Terms of office, §54-706.

Vacancies, §54-706.

Temporary practice, §54-711.**Title.**Unlawfully assuming title or
designation, §54-705.**CHURCHES.****Morticians, funeral directors and
embalmers.**Exemptions from provisions of act,
§54-1104.

CLOSED CIRCUIT TELECASTS.**Boxing, sparring and wrestling.**

Bond of promoter, §54-408.

Permits, §54-405.

Reports, §54-413.

Tax on gross receipts, §54-413.

CODES.**National electrical code.**

Legislative declaration, §54-1001.

COMPACTS.**Nurses.**

Licenses, §54-1418.

COMPLAINTS.**Accountants.**

Injunctions pendente lite, §54-223.

COMPROMISE AND SETTLEMENT.**Real estate brokers and salespersons.**

Real estate recovery fund.

Claims, §54-2072.

CONFIDENTIALITY OF INFORMATION.**Dentists.**

Peer review committees.

Records, §54-934.

Midwives.

Client protection, §54-5510.

Pharmacists and pharmacies.

Failure to safeguard confidentiality of medical records.

Grounds for medical discipline, §54-1814.

Prescriptions and patient information, §54-1727.

Physicians and surgeons.

Board of medicine.

Access to records, §54-1820.

Informal consultations, no physician-patient relationship established, §54-1821.

Prescription records.

Patient information and prescription records, §54-1727.

Real estate brokers and salespersons.

Brokerage representation.

Duties as to confidential client information, §§54-2087, 54-2092.

CONFLICT OF LAWS.**Public works contractors.**

Act superior to all laws in conflict, §54-1922.

Real estate brokers and salespersons.

Brokerage representation, §54-2095.

CONFLICTS OF INTEREST.**Cosmeticians.**

Board of cosmetology.

Affiliations of members with schools of cosmetology or company selling cosmetic supplies, §54-829.

Dentists.

Board of dentistry, §54-909.

Optometrists.

Referrals by optical firms prohibited, §54-1525.

Physicians and surgeons.

Board of professional discipline.

Disqualification for conflict, §54-1806A.

Real estate brokers and salespersons.

Licensees dealing with in own property interests, §54-2055.

CONSENT.**Counselors and therapists.**

Informed consent, §54-3410A.

Midwives.

Informed consent, §54-5511.

Social workers.

Privileged communications.

Disclosing information, §54-3213.

CONSTRUCTION.**Construction management**

licensing, §§54-4501 to 54-4514.

CONSTRUCTION AND INTERPRETATION.**Accountants.**

Inapplicability of chapter, §54-226.

Architects.

Separability of provisions, §54-311.

Athletic trainers.

Intent of legislature, §54-3901.

Barbers.

Separability of provisions, §54-525.

Cosmeticians.

Separability of provisions, §54-825.

Dentures.

Freedom of choice of dentures act.

Severability of provisions, §54-3322.

Electrical contractors and journeymen.

Separability of provisions, §54-1018.

Engineers.

Saving clause, §54-1223.

Separability of provisions, §54-1226.

Midwives.

Applicability of provisions, §54-5508.

Severability of provisions, §54-5513.

CONSTRUCTION AND INTERPRETATION —Cont'd

Occupational therapists.

Severability of provisions, §54-3722.

Pharmacists and pharmacies.

Out-of-state mail service pharmacies.

Legislative declaration, §54-1741.

Severability of provisions, §54-1771.

Psychologists.

Liberal construction of act, §54-2301.

Public works contractors.

Act superior to all laws in conflict,
§54-1922.

Separability of provisions, §54-1924.

Social workers.

Exemptions, §54-3215.

Veterinarians.

Statutory construction, §54-2102.

CONSTRUCTION CONTRACTORS,

§§54-5201 to 54-5219.

Actions.

Unregistered contractors.

Barred from bring lawsuits,
§54-5217.

Agriculture.

Persons erecting an agriculture
building.

Exemption from act, §54-5205.

Attorney general.

Legal counsel in actions and
proceedings, §54-5218.

Building permits.

Contractor registration number
required for issuance, §54-5209.

Citation of act, §54-5201.

Commercial property owners.

Exemption from act, §54-5205.

Day laborers.

Exemption from act, §54-5205.

Definitions, §54-5203.

Fees.

Application for registration,
§54-5210.

Deposition of receipts, §54-5212.

Flood control.

Water delivery or water management
entities.

Exemption from act, §54-5205.

Idaho contractors board, §§54-5206, 54-5207.

Compensation of members, §54-5206.

Composition, §54-5206.

Creation, §54-5206.

Delegation of powers to bureau chief,
§54-5206.

Powers and duties, §§54-5206,
54-5207.

CONSTRUCTION CONTRACTORS —Cont'd

Liens.

Unregistered contractors.

Denial of lien rights, §54-5208.

Posting at site.

Contractor registration number,
§54-5209.

Property owners working on own residence.

Exemption from act, §54-5205.

Prosecuting attorneys.

Legal counsel in actions and
proceedings, §54-5218.

Public policy, §54-5202.

Public utilities.

Exemption from act, §54-5205.

Registration.

Application process, §54-5210.

Assignability, §54-5214.

Disciplinary action against
registrants, §§54-5215 to
54-5217.

Display of registration certificate,
§54-5214.

Exempt persons, §54-5205.

Investigation of registrants,
§54-5215.

Penalties for violations, §54-5217.

Reciprocal registration, §54-5213.

Reinstatement of lapsed registration,
§54-5211.

Reinstatement of registration after
discipline, §54-5216.

Renewal, §54-5211.

Required, §54-5204.

Transferability, §54-5214.

Unregistered contractors, §§54-5204,
54-5208.

Denial of lien rights, §54-5208.

Wallet-size card, §54-5214.

Title of act, §54-5201.

Unregistered contractors,

§§54-5204, 54-5208.

Denial of lien rights, §54-5208.

CONSTRUCTION MANAGEMENT LICENSING, §§54-4501 to 54-4514.

Bidding of contracts, §54-4511.

Bonds, surety, §54-4512.

Compulsory, §54-4504.

Construction management services.

Defined, §54-4503.

Construction manager.

Defined, §54-4502.

Definitions, §54-4503.

CONSTRUCTION MANAGEMENT LICENSING —Cont'd

Disciplinary action against licensees, §54-4508.

Education requirements, §54-4505.

Fees.

Schedule of fees, §54-4510.

Firms.

Bidding on contracts, §54-4511.

Certificates of authority, §54-4509.

Defined, §54-4503.

Dual capacity, §54-4511.

Inactive status, §54-4507.

Injunctive relief, §54-4514.

Interim licenses, §54-4506.

Legislative purpose, §54-4502.

Mandatory, §54-4504.

Misdemeanor violations, §54-4513.

Probation of licensee, §54-4508.

Public policy, §54-4502.

Reinstatement.

Inactive license, §54-4507.

Suspended or revoked license,
§54-4508.

Renewal of license, §54-4507.

Requirements for licensure,
§54-4505.

Short title, §54-4501.

Suspension of license.

Disciplinary proceedings, §54-4508.

Temporary licenses, §54-4506.

Title of act, §54-4501.

Work experience, §54-4505.

CONTEMPT.

Landscape architects.

Disobedience to subpoena issued by
board, §54-3003.

Podiatrists.

Disobedience of subpoena in license
suspension or revocation
proceedings, §54-610.

CONTESTS.

Boxing, sparring and wrestling,
§§54-401 to 54-422.

CONTINGENT FEES.

Accountants, §54-218.

CONTINUING EDUCATION.

Accountants.

In lieu of license revocation or
suspension, §54-219.

Renewal of license as certified public
accountant, §54-211.

Engineers and surveyors.

Disciplinary action, §54-1220.

CONTINUING EDUCATION

—Cont'd

**Heating, ventilation and air
conditioning contractors.**

Board to establish requirements by
rule, §54-5010.

Naturopathic physicians, §54-5109.

Nursing home administrators,
§54-1608.

Pharmacists, §54-1725.

Physical therapy practice.

Licenses, §54-2206.

Podiatrists.

License renewal, §54-607.

Real estate appraisers, §54-4116.

**Real estate brokers and
salespersons**, §54-2023.

**Residential care or assisted living
facilities.**

Administrators, §54-4209.

Respiratory care practice.

License renewal, §54-4310.

Social workers.

Board of social work examiners.

Power to prescribe requirements
for license renewal, §54-3204.

Veterinarians.

Accredited continuing education
activity, §54-2103.

CONTRACTORS.

Construction contractors.

Registration requirements, §§54-5201
to 54-5219.

**Electrical contractors and
journeymen**, §§54-1001 to
54-1019.

**Heating, ventilation and air
conditioning contractors**,
§§54-5001 to 54-5024.

Public works.

General provisions, §§54-1901 to
54-1930.

Public contracts bond act.

Suit on public works contractor's
payment bond, §54-1927.

Workers' compensation.

Construction contractors.

Application for registration.

Proof of insurance certificate or
waiver, §54-5210.

CONTRACTS.

Funeral merchandise or services.

Prepaid funeral or cemetery
merchandise or services,
§§54-1129 to 54-1138.

Geologists.

State and political subdivision
contracts, §54-2818.

CONTRACTS —Cont'd**Medically indigent persons.**

Legend drug donation act, §§54-1760 to 54-1765.

Morticians, funeral directors and embalmers.

Prepaid funeral or cemetery merchandise or services, §§54-1129 to 54-1138.

Public works.**Contractors.**

Contract awarding agencies.
Filing of notices and income tax return, §54-1904A.

Respiratory care practice.**Board.**

Verification of claims of applicants, §54-4317.

CONTROLLED SUBSTANCES.**Health professional peer entity assistance, §§54-4401 to 54-4407.****Idaho wholesale drug distribution act, §§54-1751 to 54-1759.****Naturopathic physicians.**

Prohibited from dispensing, §54-5105.

Pharmacists and pharmacies, §§54-1701 to 54-1759.**Physicians and surgeons.**

Prescribing or furnishing dangerous drugs.
Grounds for medical discipline, §54-1814.

Wholesale drug distribution act, §§54-1751 to 54-1759.**COPIES.****Architects.****Licenses.**

Certified copies as evidence, §54-306.

Certified copies.**Architects.****Licenses.**

Certified copies as evidence, §54-306.

CORPORATIONS.**Accountants.**

Use of title, §54-220.

Architects.

Corporate practice, §54-316.
Foreign corporate practice, §54-316.

Engineers.

Certification fee, §54-1213.
Practice of professional engineering, §54-1235.

CORPORATIONS —Cont'd**Geologists.**

Practice of geology by staff members of corporations.

Exceptions to act, §54-2822.

Real estate appraisers.

Use of term "state licensed or certified real estate appraiser," §54-4111.

Real estate brokers and salespersons.**Licenses.**

Primary licenses for legal business entities.

Additional requirements, §54-2016.

Surveys and surveyors.

Practice by corporations, §54-1235.

Veterinary practice, §54-2113.**CORRECTIONS.****Nurses.**

Use of medical attendants by department of corrections.

Exceptions to nursing licensing requirements, §54-1412.

COSMETICIANS, §§54-801 to 54-837.**Affidavits.**

False statements and affidavit perjury, §54-820.

Appeals.

Persons aggrieved by action of board in denying, suspending or revoking license, §54-835.

Applicability of chapter.

Exemptions, §54-804.

Apprentices.

Defined, §54-802.

Independent practice, §54-807.

Practice of apprentice, §54-807.

Temporary permits, §54-827.

Attorney general.

Board of cosmetology.

Legal advisor to board, §54-836.

Barbers.

Persons exempt from chapter, §54-504.

Board of cosmetology.

Administrative regulations, §54-821.

Age of members, §54-829.

Appointment of members, §54-828.

Attorney general.

Legal advisor to board, §54-836.

Conflicts of interest, §54-829.

Created, §54-828.

Organization, §54-831.

Appeals.

Persons aggrieved by action of board, §54-835.

COSMETICIANS —Cont'd**Board of cosmetology —Cont'd****Organization —Cont'd****Bylaws.**

Adoption, §54-831.

Compensation of members,
§54-832.

Expenses, §54-832.

Meetings, §54-831.

Officers.

Election, §54-831.

Quorum, §54-831.

Records.Permanent record of proceedings,
§54-834.**Register.**Board to keep register of
applications for registration,
§54-834.

Removal of members, §54-833.

Vacancies, §54-833.

Qualifications of members, §54-829.

Terms of members, §54-828.

Buildings.Cosmetological establishments
located in buildings containing
living quarters, §54-803.**Chemical services.****Student cosmetologists.**Minimum hours of instruction for
certain services, §54-837.**Citation of chapter, §54-826.****Conflicts of interest.****Board of cosmetology.**Affiliations of members with
schools of cosmetology or
company selling cosmetic
supplies, §54-829.**Construction and interpretation.**

Separability of provisions, §54-825.

Cosmetological establishments.

Defined, §54-802.

Inspections, §54-824.

Location in buildings containing
living quarters, §54-803.Regulation of establishments,
§54-803.**Cosmetology.**

Defined, §54-802.

Criminal offenses.

Prohibited acts, §54-819.

Declaration of policy, §54-801.**Definitions, §54-802.****Electrologist.**

Defined, §54-802.

Qualifications, §54-805.

Electrologist instructor.

Defined, §54-802.

COSMETICIANS —Cont'd**Electrologist instructor —Cont'd**

Qualifications, §54-805.

Esthetician.

Defined, §54-802.

Qualifications, §54-805.

Esthetics.

Defined, §54-802.

Examinations.**Fees.**

Schedule of fees, §54-818.

Scope of examination, §54-810.

Exemptions to chapter, §54-804.**Fees.**Deposit of fees in state treasury,
§54-823.**Licenses.**

Application fee, §54-809.

Renewal or reinstatement, §54-815.

Permits.Temporary permits to practice,
demonstrate or teach
cosmetology, §54-827.

Renewal fees, §54-815.

Schedule of fees, §54-818.

Haircutter.

Defined, §54-802.

Qualifications, §54-805.

Haircutting.

Defined, §54-802.

Hearings.Refusal, revocation or suspension of
certificate or license, §54-817.**Indorsement.**

Licenses, §54-812.

Instructors.

Defined, §54-802.

Instructor trainees.

Defined, §54-802.

**Judicial review of board action
denying, suspending, etc.,
license, §54-835.****Legislative policy, §54-801.****Licenses.****Appeals.**Orders denying, suspending or
revoking license, §54-835.

Applications, §54-809.

Display, §54-814.

Expiration.

Failure to renew, §54-815.

Fees, §54-818.

Application fee, §54-809.

Renewal or reinstatement, §54-815.

Indorsement, §54-812.

Issuance, §54-811.

Makeover or glamour photography
business, §54-805B.

COSMETICIANS —Cont'd

Licenses —Cont'd

- Practitioners prior to amendment, §54-813.
- Public records for licenses, §54-822.
- Refusal, revocation or suspension, §54-816.
- Reinstatement of expired license, §54-815.
- Renewal, §54-815.
- Requirements, §54-805.
- Retail cosmetics dealer, §54-805A.

Makeover or glamour photography business.

- Defined, §54-802.
- Licenses, §54-805B.

Misdemeanors.

- Prohibited acts, §54-819.

Nail technician.

- Defined, §54-802.
- Qualifications, §54-805.

Nail technology.

- Defined, §54-802.

Oaths.

- False statements and oath perjury, §54-820.

Perjury.

- False statements and oaths or affidavits, §54-820.

Permits.

- Temporary permits to practice, demonstrate or teach cosmetology, §54-827.

Practice of apprentice, §54-807.

Practice of cosmetology.

- Unlawful to practice except in cosmetological establishments, §54-803.

Practitioners prior to amendment, §54-813.

Prohibited acts, §54-819.

Prosecuting attorneys.

- Duty to prosecute violations, §54-836.

Qualifications of cosmeticians.

- Requirements for licenses, §54-805.

Records.

- Board of cosmetology.
- Permanent record of proceedings, §54-834.

Licenses.

- Public records for licenses, §54-822.

Registered cosmetologists.

- Defined, §54-802.
- Qualifications, §54-805.

Retail cosmetics dealer.

- Defined, §54-802.
- License.
- Requirements, §54-805A.

COSMETICIANS —Cont'd

Rules and regulations.

- Administrative regulations, §54-821.

Sanitation, §54-824A.

- Inspections of cosmetological establishments, §54-824.

School of cosmetology.

- Bond requirement, §54-808.
- Curriculum, §54-808.
- Defined, §54-802.
- Registration, §54-806.
- Regulations for schools, §54-808.
- Who may operate, §54-806.

Separability of provisions, §54-825.

Short title of chapter, §54-826.

Student electrologist instructor.

- Defined, §54-802.

Students.

- Defined, §54-802.
- Minimum hours of instruction for certain services, §54-837.

Violations.

- Prohibited acts, §54-819.
- Prosecuting attorneys.
- Duty to prosecute violations, §54-836.
- Refusal, revocation or suspension of certificate or license, §54-816.

COSTS.

Accountants.

- Proceedings initiated for violations of chapter, §54-219.

Chiropractors.

- Imposition of administrative fines, §54-713.
- Unlawful practice, §54-705.

Physicians and surgeons.

- Actions for unlicensed practice, §54-1804.

Surveys and surveyors.

- Public surveying.
- Costs of assessment of damages, §54-1233.

COUNSELOR-CLIENT PRIVILEGE, §54-3410.

COUNSELORS AND THERAPISTS, §§54-3401 to 54-3415.

Associate marriage and family therapist.

- Defined, §54-3401.
- Licenses, §54-3405B.

Board.

- Creation, §54-3403.
- Powers, §54-3404.

Bureau of occupational licenses.

- Administration, §54-3413.

COUNSELORS AND THERAPISTS

—Cont'd

Bureau of occupational licenses

—Cont'd

Powers and duties, §54-3414.

Clinical professional counselors.

Defined, §54-3401.

Licenses, §54-3405A.

Definitions, §54-3401.**Disciplinary proceedings, §54-3407.****Disclosure of information to clients, §54-3410A.****Fees.**

Distribution of fees collected, §54-3412.

Licenses, §54-3411.

Informed consent, §54-3410A.**Injunctions, §54-3409.****Legislative findings, §54-3400.****Licenses.**

Associate marriage and family therapist, §54-3405B.

Clinical professional counselors, §54-3405A.

Exemptions from requirement, §54-3402.

Fees, §54-3411.

Indorsement, §54-3406.

Marriage and family therapist, §54-3405C.

Qualifications, §54-3405.

Renewal or reinstatement, §54-3415.

Required, §54-3402.

Marriage and family therapists, §54-3405C.**Peer entity assistance, §§54-4401 to 54-4407.****Privileged communications, §54-3410.****Prohibited acts, §54-3408.****Public policy, §54-3400.****Reciprocity.**

Licenses, §54-3406.

COUNTIES.**Heating, ventilation and air conditioning contractors, journeymen and apprentices.**

Inspection of work performed under permit.

Establishment of time permit holder to request, §54-5020.

Mechanical inspectors, certification required, §54-5021.

Permits and inspections.

Work regulated and enforced by code or ordinance, §54-5016.

Requiring additional licenses or fees. No jurisdiction, §54-5015.

COUNTY ATTORNEYS.**Landscape architects.**

Prosecution of violations, §54-3005.

Real estate appraisers.

Violations of provisions.

Prosecution by, §54-4118.

COURT REPORTERS.**Shorthand reporters, §§54-3101 to 54-3118.****COURTS.****Public works contractors.**

Revocation of license by court, §54-1919.

Reporters.

Certified shorthand reporters, §§54-3101 to 54-3118.

Stenographers.

Certified shorthand reporters, §§54-3101 to 54-3118.

C.P.A.**Accountants.**

Generally, §§54-201 to 54-228.

CREMATORIUMS.**Cremation agreements.**

Prearranged funeral plans generally, §§54-1139 to 54-1143.

Delivery of human remains without consent, §54-1120.**Licensure of crematory establishments.**

Cancellation of license.

Failure to have full-time mortician in employ, §54-1111.

Expiration, §54-1115A.

Fee for crematory license, §54-1115.

Power of board of morticians, §54-1106.

Reinstatement, §54-1115A.

Renewal, §54-1115A.

Requirements for crematory license, §54-1111.

Merchandise.

Prepaid funeral or cemetery merchandise or services, §§54-1129 to 54-1138.

Person initiating process of cremation.

Supervision of licensed mortician, §54-1104.

Prepaid funeral or cemetery merchandise or services, §§54-1129 to 54-1138.**Removal of remains from casket without consent, §54-1120.****Sending body to establishment without inquiry, §54-1118.**

CREMATORIUMS —Cont'd Services.

Prepaid funeral or cemetery merchandise or services, §§54-1129 to 54-1138.

Supervision of licensed mortician.

Person initiating process of cremation, §54-1104.

Veterans, unclaimed cremated remains.

Assumption of control over.
Division of veterans services or veterans organization, §54-1144.

CRIMES AND OFFENSES.**Accountants.**

Violations of chapter generally, §54-222.

Acupuncture, §54-4713.**Architects, §54-310.**

Grounds for revocation and suspension of licenses, §54-305.

Athletic trainers, §54-3916.**Barbers, §54-519.****Chiropractors.**

Practice without a license, §54-705.

Construction contractors.

Unregistered contractors, §54-5217.

Construction management licensing.

Misdemeanor violations, §54-4513.

Cosmeticians.

Prohibited acts, §54-819.

Counselors and therapists.

Prohibited acts, §54-3408.

Dentists.

Dental hygienists.

Unlawful practice of dental hygiene, §54-906.

Licenses.

Revocation for convictions of crime, §54-923.

Unlicensed practice of dentistry, §54-905.

Dentures.

Freedom of choice of dentures act, §54-3319.

Dietitians, §54-3511.**Driving businesses.**

Prohibited acts, §54-5409.

Electrical contractors and journeymen.

Violations of provisions generally, §54-1017.

Engineers, §54-1222.**Heating, ventilation and air conditioning contractors, journeymen and apprentices, §54-5022.****CRIMES AND OFFENSES —Cont'd Liquefied petroleum gas.**

Unlicensed persons, §54-5316.

Massage therapists.

Criminal penalties for violations of act, §54-4014.

Midwives.

Unauthorized use of title or designation, §54-5506.

Unlicensed practice, §54-5506.

Morticians, funeral directors and embalmers, §54-1138.

Prepaid funeral or cemetery merchandise or services, §54-1138.

Naturopathic physicians.

Conviction of crime involving moral turpitude.

Grounds for disciplinary action against licensees, §54-5115.

Unlicensed practice, §54-5117.

Nurses.

Unlawful conduct, §54-1414.

Nursing home administrators, §54-1611.**Occupational therapists, §54-3720.****Optometrists.**

Grounds for revocation of license, §54-1510.

Practice without a license, §54-1502.

Pharmacists and pharmacies.

Criminal prosecutions for violations of act, §54-1728.

Legend drugs.

Dispensing or delivering, §54-1732.

Mail service pharmacies located out-of-state.

Violations generally, §54-1748.

Unlawful practice of pharmacy, §54-1721.

Wholesale drug distribution, §54-1759.

Physical therapy practice, §54-2223.**Physicians and surgeons.**

Unlicensed practice, §54-1804.

Plumbing and plumbers.

Violations of chapter generally, §54-2628.

Podiatrists.

Practice without license, §54-614.

Public works contractors, §54-1920.**Racing, §54-2509.****Real estate appraisers, §54-4119.****Real estate brokers and salespersons.**

Acting without license, §54-2065.

Residential care facility administrators.

Prohibited acts, §54-4212.

CRIMES AND OFFENSES —Cont'd**Respiratory care practice**, §54-4320.**Scrap dealers.**

Nonferrous or stainless steel metal property.

Unlawful violations, §54-2707.

Shorthand reporters, §54-3118.**Social workers**, §54-3217.**Speech and hearing services practitioners.**

Disciplinary action against licensees, §54-2925.

Unlawful practice, §54-2927.

Student athlete agents, §54-4815.**Veterinarians.**

Practice without license or temporary permit, §54-2118.

Unauthorized practice, §54-2114.

Water supply and waterworks.

Drinking water and wastewater professionals licenses, §54-2413.

CRIMINAL HISTORY RECORDS AND CRIME INFORMATION.**Certified medication assistant (MA-C)**, §54-1406A.**Driving business.**

Fingerprint-based criminal history check, §54-5405.

Nurses.

Certified medication assistant (MA-C), §54-1406A.

License requirements, §54-1401.

Physicians and surgeons.

Applicants for license.

Fingerprint-based*criminal history records check, §§54-1810, 54-1811.

Real estate brokers and salespersons.

Fingerprint-based criminal history records check.

Applicant for individual primary license, §§54-2012, 54-2015.

Veterinarians.

Licensure requirement, §54-2108.

CRIMINAL PROCEDURE.**Pharmacists and pharmacies.**

Proof that drug is prescription or legend drug, §54-1738.

D**DAMAGES.****Chiropractors.**

Unlawful practice, §54-705.

Physicians and surgeons.

Disabled physicians.

No liability for damages, §54-1840.

DAMAGES —Cont'd**Physicians and surgeons —Cont'd**

Unlicensed practice, §54-1804.

Student athlete agents, §54-4816.**Surveys and surveyors.**

Public surveys and surveying.

Assessment of damages for entry, §54-1231.

Costs of assessments, §54-1233.

Tender of damages for entry, §54-1232.

DEAD BODIES.**Department of health and welfare.**

Authority to control handling of dead bodies, §54-1119.

Disposition of dead bodies.

Authority in absence of or not covered by prearranged funeral plan, §54-1142.

Fiduciaries, §54-1118.

Prearranged funeral plans, §§54-1139 to 54-1143.

Authority in absence of or not covered by prearranged funeral plan, §54-1142.

Instructions for disposition, §54-1139.

Exceptions, §54-1140.

Right to rely on authorization, §54-1143.

Survivor's services, §54-1141.

Public interest and concern, §54-1101.

Embalmers, §§54-1101 to 54-1144.**Executors and administrators.**

Disposition, §54-1118.

Fiduciaries.

Disposition of dead bodies, §54-1118.

Funeral directors.

Morticians, funeral directors and embalmers, §§54-1101 to 54-1144.

Morticians, funeral directors and embalmers, §§54-1101 to 54-1144.**Permits.**

Transportation outside state, §54-1120.

Physicians and surgeons.

Postmortem examinations.

Consent, §54-1817.

Prearranged funeral plans, §§54-1139 to 54-1143.**Transportation outside state.**

Mortician's certificate required, §54-1120.

Permits.

Receiving body for transportation without permit prohibited, §54-1120.

DEAD BODIES —Cont'd**Undertakers.**

Morticians, funeral directors and embalmers, §§54-1101 to 54-1144.

DEAF PERSONS.

Speech and hearing services practitioners, §§54-2901 to 54-2927.

DEALERS.

Scrap dealers, §§54-2701 to 54-2708.

DEATH.

Defined, §54-1819.

Medical death.

Defined, §54-1819.

Physicians and surgeons.

Definition of death, §54-1819.

Determination of death, §54-1819.

Medical death.

Defined, §54-1819.

Real estate brokers and salespersons.

Designated broker, §54-2057.

DEFINED TERMS.

Acceptable school of chiropractic, §54-703.

Acceptable school of medicine, §54-1803.

Accredited college or university.

Real estate brokers and salespersons, §54-2004.

Accredited continuing education activity.

Veterinarians, §54-2103.

Accredited or approved school of veterinary medicine, §54-2103.**Acting in this state.**

Real estate brokers and salespersons, §54-2004.

Active license.

Real estate brokers and salespersons, §54-2004.

Acupuncture, §54-4702.**Adjustment.**

Chiropractic practice, §54-704.

Administrator designee.

Nursing home administrators, §54-1601.

Adults.

Prearranged funeral plans, §54-1142.

Advance deposit wagering, §54-2512.

Advanced practice registered nurse, §54-1402.

Adverse action.

Nurse licensure compact, §54-1418.

DEFINED TERMS —Cont'd**Adverse material fact.**

Real estate brokers and salespersons.
Brokerage representation, §54-2083.

Advertise.

Massage therapists, §54-4002.

Agency contract.

Athlete agents, §54-4802.

Agency representation.

Real estate brokers and salespersons.
Brokerage representation, §54-2083.

AICPA.

Accountants, §54-206.

Aide in the delivery of

occupational therapy services, §54-3702.

Allied health professional.

Veterinarians, §54-2103.

Alternate supervising physician, §54-1803.

Alternative program.

Nurse licensure compact, §54-1418.

Amateur combatant.

Boxing and wrestling, §54-402.

Anesthetized.

Veterinarians, §54-2103.

Animal.

Veterinarians, §54-2103.

Anti-epileptic drug.

Notification of drug product selection for epilepsy and seizure drugs, §54-1770.

Applicant.

Accountants, §54-206.

Boxing and wrestling, §54-402.

Construction management licensing, §54-4503.

Physical therapy practice, §54-2203.

Respiratory care practice, §54-4303.

Speech and hearing services practitioners, §54-2903.

Appraisal.

Real estate appraisers, §54-4104.

Appraisal assignment.

Real estate appraisers, §54-4104.

Appraisal foundation.

Real estate appraisers, §54-4104.

Appraiser.

Real estate appraisers, §54-4104.

Apprentice.

Cosmetology, §54-802.

Apprentice electrician, §54-1003A.

Approved naturopathic medical program.

Naturopathic physicians, §54-5102.

Architects, §54-309.

DEFINED TERMS —Cont'd**Assigned agent.**

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

Assistant.

Veterinarians, §54-2103.

Associate broker.

Real estate brokers and salespersons,
§54-2004.

Athlete.

Athletic trainers, §54-3902.

Athlete agent, §54-4802.**Athlete injury.**

Athletic trainers, §54-3902.

Athlete trainer, §54-3902.**Athlete training, §54-3902.****Athletic director.**

Athlete agents, §54-4802.

Attest.

Accountants, §54-206.

Audiologist.

Speech and hearing services
practitioners, §54-2903.

Authentication.

Wholesale drug distribution,
§54-1752.

Authorized distributor of record.

Wholesale drug distribution,
§54-1752.

Available.

Certified shorthand reporters,
§54-3102.

Backflow assembly tester.

Drinking water and wastewater
professionals licenses, §54-2403.

Backflow prevention assembly.

Drinking water and wastewater
professionals licenses, §54-2403.

Benchmark.

Surveys and surveyors, §54-1202.

Beneficiary, §54-1131.**Bid.**

Public works contractors, §54-1901.

Bidder.

Public works contractors, §54-1901.

Booking agent.

Boxing and wrestling, §54-402.

Boxing, §54-402.**Branch office.**

Real estate brokers and salespersons,
§54-2004.

Broadcast.

Boxing and wrestling, §54-402.

Brokerage.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

DEFINED TERMS —Cont'd**Brokerage company.**

Real estate brokers and salespersons,
§54-2004.

Brokerage price opinion.

Real estate brokers and salespersons,
§54-2004.

Brokerage representation.

Real estate brokers and salespersons,
§54-2083.

Brokerage representation agreement.

Real estate brokers and salespersons,
§54-2004.

Broker's price opinion.

Real estate appraisers, §54-4104.

Building.

Architects, §54-309.

Bureau chief.

Psychologists, §54-2302.

Burial.

Morticians, funeral directors and
embalmers, §54-1102.

Business conduct and office operations course.

Real estate brokers and salespersons,
§54-2004.

Business entity.

Surveys and surveyors, §54-1202.

Business name.

Real estate brokers and salespersons,
§54-2004.

Business opportunity.

Real estate brokers and salespersons,
§54-2004.

Certificates.

Accountants, §54-206.
Real estate appraisers, §54-4104.

Certified.

Drinking water and wastewater
professionals licenses, §54-2403.

Certified euthanasia agency,
§54-2103.**Certified euthanasia technician,**
§54-2103.**Certified person or seller.**

Funeral or cemetery merchandise or
services, §54-1131.

Certified professional midwife.

Midwives, §54-5502.

Certified public accountant,
§54-206.**Certified pulmonary function technologist.**

Respiratory care practice, §54-4303.

Certified respiratory therapy technician.

Respiratory care practice, §54-4303.

DEFINED TERMS —Cont'd

Certified shorthand reporter,
§54-3102.

Certified veterinary technician,
§54-2103.

Chain pharmacy warehouse.

Wholesale drug distribution,
§54-1752.

Child.

Prearranged funeral plans, §54-1142.

Claimants.

Public works contractors, §54-1930.

Client.

Accountants, §54-206.

Midwives, §54-5502.

Real estate brokers and salespersons.

Brokerage representation,
§54-2083.

Clinical social worker, §54-3202.

Closed-circuit telecast.

Boxing and wrestling, §54-402.

Club.

Boxing and wrestling, §54-402.

Colicensed partner or product.

Wholesale drug distribution,
§54-1752.

Collection system.

Drinking water and wastewater
professionals licenses, §54-2403.

College.

Boxing and wrestling, §54-402.

Columbarium, §54-1102.

Combatant.

Boxing and wrestling, §54-402.

Commercial account.

Scrap dealers, §54-2701.

Commercial enterprise.

Scrap dealers, §54-2701.

Commercial metal property.

Scrap dealers, §54-2701.

Commission core course.

Real estate brokers and salespersons,
§54-2004.

Compensation.

Massage therapists, §54-4002.

Competent.

Prearranged funeral plans, §54-1142.

Compilation.

Accountants, §54-206.

Confidential client information.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

Construction.

Construction contractors, §54-5203.

**Construction management
services, §54-4503.**

DEFINED TERMS —Cont'd

Construction manager.

Construction management licensing,
§54-4503.

Consultation.

Veterinarians, §54-2103.

Consulting engineer, §54-1202.

Contact.

Athlete agents, §54-4802.

Contest.

Boxing and wrestling, §54-402.

**Continuing education elective
course.**

Real estate brokers and salespersons,
§54-2004.

Contract for representation.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

Contractor.

Construction contractors, §54-5203.

Convicted.

Dentists, §54-903.

Real estate brokers and salespersons,
§54-2004.

Conviction.

Dentists, §54-903.

Cooperative sale.

Real estate brokers and salespersons,
§54-2004.

**Coordinated licensure information
system.**

Nurse licensure compact, §54-1418.

Corner person.

Boxing and wrestling, §54-402.

Cosmetological establishment,
§54-802.

Cosmetology, §54-802.

Counsel.

Pharmacists and pharmacy,
§54-1705.

Counseling.

Pharmacists and pharmacy,
§54-1705.

CPM.

Midwives, §54-5502.

Credit hour.

Veterinarians, §54-2103.

Cremaains, §54-1102.

Cremation, §54-1102.

Crematory, §54-1102.

**Current significant investigative
information.**

Nurse licensure compact, §54-1418.

Customer.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

DEFINED TERMS —Cont'd**Dealer in options.**

Real estate brokers and salespersons,
§54-2004.

Death, §54-1819.**Deliver or delivery.**

Pharmacists and pharmacy,
§54-1705.

Demonstration, competition or production.

Cosmetology, §54-802.

Dental assistants, §54-903.**Dental hygienist, §54-903.****Dental specialist, §54-903.****Dentistry.**

Veterinarians, §54-2103.

Dentists, §54-903.**Denture, §54-3303.****Denturist.**

Freedom of choice of dentures act,
§54-3303.

Designated broker.

Real estate brokers and salespersons,
§54-2004.

Brokerage representation,
§54-2083.

Devices.

Pharmacists and pharmacy,
§54-1705.

Dietetic practice, §54-3505.**Dietician, §54-3502.****Directing physician.**

Athletic trainers, §54-3902.

Direct supervision.

Dentists, §54-903.

Veterinarians, §54-2103.

Discipline.

Veterinarians, §54-2103.

Dispense.

Pharmacists and pharmacy,
§54-1705.

Dispensing.

Pharmacists and pharmacy,
§54-1705.

Distance learning course.

Real estate brokers and salespersons,
§54-2004.

Distribute.

Pharmacists and pharmacy,
§54-1705.

Distribution system.

Drinking water and wastewater
professionals licenses, §54-2403.

Double contract.

Real estate brokers and salespersons,
§54-2004.

Drinking water operator.

Drinking water and wastewater
professionals licenses, §54-2403.

DEFINED TERMS —Cont'd**Driver education.**

Driving businesses, §54-5402.

Driving business, §54-5402.**Driving instructor.**

Driving businesses, §54-5402.

Drop shipment.

Wholesale drug distribution,
§54-1752.

Drug order.

Pharmacists and pharmacy,
§54-1705.

Drug outlet.

Pharmacists and pharmacy,
§54-1705.

Drug product selection.

Notification of drug product selection
for epilepsy and seizure drugs,
§54-1770.

Drugs.

Pharmacists and pharmacy,
§54-1705.

Durable power of attorney.

Prearranged funeral plans, §54-1142.

Durable power of attorney for health care.

Prearranged funeral plans, §54-1142.

Electrical contractor, §54-1003A.**Electrologist.**

Cosmetology, §54-802.

Electrologist instructor.

Cosmetology, §54-802.

Electrolysis or electrology, §54-802.**Embalming, §54-1102.****Emergency.**

Veterinarians, §54-2103.

Emergency veterinary facility, §54-2103.**Engineer, §54-1202.****Engineer intern, §54-1202.****Entry level examination.**

Respiratory care practice, §54-4303.

Epilepsy.

Notification of drug product selection
for epilepsy and seizure drugs,
§54-1770.

Establishment.

Funeral or crematory establishments,
§54-1102.

Esthetician, §54-802.**Esthetics, §54-802.****Esthetics instructor.**

Cosmetology, §54-802.

Euthanasia task force.

Veterinarians, §54-2103.

Examiner.

Nursing home administrators,
§54-1601.

DEFINED TERMS —Cont'd**Examiner —Cont'd**

Residential care facility
administrators, §54-4202.

Executive secretary.

Residential care facility
administrators, §54-4202.

Exhibition.

Boxing and wrestling, §54-402.

Expired license.

Real estate brokers and salespersons,
§54-2004.

Express agreement.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

Express contact.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

Extended access oral health care program, §54-903.**Extern.**

Pharmacists and pharmacy,
§54-1705.

Physicians and surgeons, §54-1803.

Externship.

Pharmacists and pharmacy,
§54-1705.

Extra label use.

Veterinarians, §54-2103.

Facilities.

Wholesale drug distribution,
§54-1752.

Federal aid funds.

Public works contractors, §54-1901.

Federally related transaction.

Real estate appraisers, §54-4104.

Fee or commission.

Real estate brokers and salespersons,
§54-2004.

Financial statement.

Accountants, §54-206.

Firm.

Accountants, §54-206.
Construction management licensing,
§54-4503.

Floating.

Veterinarians, §54-2103.

Freelance reporter, §54-3102.**Funeral director, §54-1102.****Funeral director license, §54-1102.****Funeral director services, §54-1102.****Funeral establishment, §54-1102.****Funeral establishment license, §54-1102.****Funeral or cemetery merchandise, §54-1131.****DEFINED TERMS —Cont'd****Funeral or cemetery services, §54-1131.****Funeral services, §54-1102.****Funeral supplies, §54-1102.****General supervision.**

Dentists, §54-903.

Geologist, §54-2802.**Geology, §54-2802.****Good moral character.**

Accountants, §54-206.

Liquefied petroleum gas, §54-5303.

Good standing.

Occupational therapists, §54-3702.

Government obligation.

Public works contractors, §54-1901.

Graduate occupational therapist, §54-3702.**Graduate occupational therapy assistant, §54-3702.****Graduate physician assistant, §54-1803.****Gross daily receipts.**

Horse racing, §54-2502.

Grower.

Grape growers and wine producers
commission, §54-3603.

Guaranteed contract.

Funeral or cemetery merchandise or
services, §54-1131.

Haircutter.

Cosmetology, §54-802.

Haircutting.

Cosmetology, §54-802.

Health care facility.

Nursing home administrators,
§54-1601.

Hearing aid.

Speech and hearing services
practitioners, §54-2903.

Hearing aid dealer and fitter.

Speech and hearing services
practitioners, §54-2903.

Hearing aid evaluation.

Speech and hearing services
practitioners, §54-2903.

Heating, ventilation and air conditioning (HVAC), §54-5003.**Heating, ventilation and air conditioning apprentice, §54-5003.****Heating, ventilation and air conditioning contractor, §54-5003.****Heating, ventilation and air conditioning journeyman, §54-5003.**

DEFINED TERMS —Cont'd

Heating, ventilation and air conditioning specialty apprentice, §54-5003.

Heating, ventilation and air conditioning specialty contractor, §54-5003.

Heating, ventilation and air conditioning specialty journeyman, §54-5003.

Heating, ventilation and air conditioning system, §54-5003.

Herd, litter or flock.
Veterinarians, §54-2103.

Home state.
Nurse licensure compact, §54-1418.

Home state action.
Nurse licensure compact, §54-1418.

Horsemen's group.
Horse racing, §54-2502.

Host facility.
Horse racing, §54-2502.

Host jurisdiction.
Horse racing, §54-2502.

Human remains, §54-1102.

Idahoans for midwives.
Midwives, §54-5502.

Idaho grape product.
Grape growers and wine producers commission, §54-3603.

Idaho midwifery council.
Midwives, §54-5502.

Idaho real estate license law and rules.
Real estate brokers and salespersons.
Brokerage representation, §54-2083.

Idaho State Bar Lawyer Assistance Program, §54-4901.

IFM.
Midwives, §54-5502.

IMC.
Midwives, §54-5502.

Immediate supervision.
Veterinarians, §54-2103.

Improper fitting.
Speech and hearing services practitioners, §54-2903.

Inactive license.
Real estate brokers and salespersons, §54-2004.

Indirect supervision.
Dentists, §54-903.
Veterinarians, §54-2103.

Indorsement contract.
Athlete agents, §54-4802.

In good standing.
Veterinarians, §54-2103.

DEFINED TERMS —Cont'd

Institutional facility.
Pharmacists and pharmacy, §54-1705.

Instructor.
Cosmetology, §54-802.

Instructor trainee.
Cosmetology, §54-802.

Intercollegiate sport.
Athlete agents, §54-4802.

Intern.
Pharmacists and pharmacy, §54-1705.
Physicians and surgeons, §54-1803.

Internship.
Pharmacists and pharmacy, §54-1705.

Interstate common wagering pool.
Horse racing, §54-2502.

Investigational drug.
Pharmacists and pharmacy, §54-1705.

Journeyman electrician, §54-1003A.

Judge.
Boxing and wrestling, §54-402.

Kickboxing.
Boxing and wrestling, §54-402.

Labeling.
Pharmacists and pharmacy, §54-1705.

Laboratory analyst.
Drinking water and wastewater professionals licenses, §54-2403.

Landscape architect, §54-3002.

Landscape architect-in-training, §54-3002.

Landscape architecture, §54-3002.

Land survey, §54-1202.

Land surveyor intern, §54-1202.

Legal business entity.
Real estate brokers and salespersons, §54-2004.

Legend drugs.
Legend drug donation act, §54-1761.
Pharmacists and pharmacy, §54-1705.

Legend/prescription drug.
Veterinarians, §54-2103.

Licensed associate marriage and family therapist.
Counselors and therapists, §54-3401.

Licensed clinical professional counselor, §54-3401.

Licensed marriage and family therapist.
Counselors and therapists, §54-3401.

Licensed midwife, §54-5502.

DEFINED TERMS —Cont'd**Licensed physician.**

Respiratory care practice, §54-4303.

Licensed practical nurse, §54-1402.**Licensed professional counselor.**

Counselors and therapists, §54-3401.

Licensed public accountant, §54-206.**Licensed registered nurse, §54-1402.****Licensed veterinarian, §54-2103.****Licensee.**

Accountants, §54-206.

Boxing and wrestling, §54-402.

Real estate brokers and salespersons, §54-2004.

Licenses.

Accountants, §54-206.

Boxing and wrestling, §54-402.

Drinking water and wastewater professionals licenses, §54-2403.

Liquefied petroleum gas, §54-5303.

Physical therapy practice, §54-2203.

Real estate appraisers, §54-4104.

Speech and hearing services practitioners, §54-2903.

License to practice chiropractic, §54-703.**License to practice medicine and surgery, §54-1803.****License to practice osteopathic medicine and surgery, §54-1803.****License with active status.**

Dentists, §54-920.

License with an inactive status.

Dentists, §54-920.

License with a special status.

Dentists, §54-920.

Licensure.

Construction management licensing, §54-4503.

Respiratory care practice, §54-4303.

Licensure board.

Nurse licensure compact, §54-1418.

Limited broker.

Real estate brokers and salespersons, §54-2004.

Limited dual agent.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

Limited service outlet.

Pharmacists and pharmacy,
§54-1705.

Liquefied petroleum gas, §54-5303.**Live presentation.**

Real estate brokers and salespersons,
§54-2004.

DEFINED TERMS —Cont'd**Local governments.**

Heating, ventilation and air conditioning contractors,
§54-5003.

LPG.

Liquefied petroleum gas, §54-5303.

LP-Gas.

Liquefied petroleum gas, §54-5303.

LPG code.

Liquefied petroleum gas, §54-5303.

LPG dealer.

Liquefied petroleum gas, §54-5303.

LPG dealer practice.

Liquefied petroleum gas, §54-5303.

LPG facility.

Liquefied petroleum gas, §54-5303.

Main office.

Real estate brokers and salespersons,
§54-2004.

Maintenance electrician, §54-1003A.**Makeover or glamour photography business, §54-802.****Malpractice.**

Veterinarians, §54-2103.

Manager.

Boxing and wrestling, §54-402.

Manipulation.

Chiropractic practice, §54-704.

Manufacture.

Pharmacists and pharmacy,
§54-1705.

Manufacturer.

Pharmacists and pharmacy,
§54-1705.

Wholesale drug distribution,
§54-1752.

Manufacturer's exclusive distributor.

Wholesale drug distribution,
§54-1752.

Marriage and family therapy.

Counselors and therapists, §54-3401.

Martial arts.

Boxing and wrestling, §54-402.

Massage school.

Massage therapists, §54-4002.

Massage therapist, §54-4002.**Massage therapy, §54-4002.**

Chiropractic practice, §54-704.

Master journeyman electrician, §54-1003A.**Masters social worker, §54-3202.****Matchmaker.**

Boxing and wrestling, §54-402.

MEAC.

Midwives, §54-5502.

DEFINED TERMS —Cont'd**Medical incompetence.**

Veterinarians, §54-2103.

Medically indigent.

Legend drug donation act, §54-1761.

Medical nutrition services,
§54-3505.**Member.**

Accountants, §54-206.

Midwifery education accreditation council,
§54-5502.**Ministerial acts.**

Real estate brokers and salespersons.

Brokerage representation,
§54-2083.

Minor office procedures.

Naturopathic physicians, §54-5102.

Mobile clinic.

Veterinarians, §54-2103.

Mortician, §54-1102.**Mortician license,** §54-1102.**Mortician services,** §54-1102.**Multistate licensure privilege.**

Nurse licensure compact, §54-1418.

NACPM.

Midwives, §54-5502.

Nail technician, §54-802.**Nail technology,** §54-802.**Nail technology instructor.**

Cosmetology, §54-802.

NARM.

Midwives, §54-5502.

National association of certified professional midwives.

Midwives, §54-5502.

National Board for Respiratory Care, Inc.

Respiratory care practice, §54-4303.

Native vineyard.

Grape growers and wine producers
commission, §54-3603.

Natural health care services.

Naturopathic physicians, §54-5102.

Naturopathic medical formulary.

Naturopathic physicians, §54-5102.

Naturopathic medical formulary council.

Naturopathic physicians, §54-5102.

Naturopathic medicine, §54-5102.**Naturopathic physicians,** §54-5102.**NCCADM.**

Acupuncture, §54-4702.

New drugs.

Pharmacists and pharmacy,
§54-1705.

Nonagent.

Real estate brokers and salespersons.

Brokerage representation,
§54-2083.

DEFINED TERMS —Cont'd**Noncomplex appraisal.**

Real estate appraisers, §54-4104.

Nonferrous metal property.

Scrap dealers, §54-2701.

Nonguaranteed contract.

Funeral or cemetery merchandise or
services, §54-1131.

Nonprescription drugs.

Pharmacists and pharmacy,
§54-1705.

Normal distribution channel.

Wholesale drug distribution,
§54-1752.

North American registry of midwives,
§54-5502.**Nurse.**

Nurse licensure compact, §54-1418.

Nurse practitioner, §54-1402.**Nursing education program,**
§54-1402.**Nursing home administrator,**
§54-1601.**Nursing home**

administrator-in-training,
§54-1601.

Nutritional assessment.

Dieticians, §54-3505.

Nutrition therapy counseling.

Dieticians, §54-3505.

Occupational therapist, §54-3702.**Occupational therapy,** §54-3702.**Occupational therapy assistant,**
§54-3702.**Official court reporter,** §54-3102.**On-call emergency service.**

Veterinarians, §54-2103.

Operating personnel.

Drinking water and wastewater
professionals licenses, §54-2403.

Operator.

Drinking water and wastewater
professionals licenses, §54-2403.

Ophthalmic materials, §54-1525.**Out-of-state mail service pharmacy,**
§54-1742.**Owner/ownership.**

Veterinarians, §54-2103.

Pari-mutuel.

Horse racing, §54-2502.

Participant.

Boxing and wrestling, §54-402.

Party state.

Nurse licensure compact, §54-1418.

Patient.

Health care provider profiles,
§54-4602.

DEFINED TERMS —Cont'd**Pedigree.**

Wholesale drug distribution,
§54-1752.

Peer assistance entity, §54-4401.**Peer review.**

Accountants, §54-206.

Performance of respiratory care.

Respiratory care practice, §54-4303.

Permit.

Accountants, §54-206.

Person.

Accountants, §54-206.

Athlete agents, §54-4802.

Boxing and wrestling, §54-402.

Chiropractors, §54-703.

Construction contractors, §54-5203.

Construction management licensing,
§54-4503.

Grape growers and wine producers
commission, §54-3603.

Horse racing, §54-2502.

Pharmacists and pharmacy,
§54-1705.

Physicians and surgeons, §54-1803.

Psychologists, §54-2302.

Public works contractors, §§54-1901,
54-1930.

Real estate brokers and salespersons,
§54-2004.

Respiratory care practice, §54-4303.

Veterinarians, §54-2103.

Pharmaceutical care, §54-1705.**Pharmacist, §54-1705.****Pharmacy, §54-1705.****Physical or mental incompetence.**

Veterinarians, §54-2103.

Physical therapist.

Physical therapy practice, §54-2203.

Physical therapist assistant.

Physical therapy practice, §54-2203.

Physical therapy.

Physical therapy practice, §54-2203.

Physician, §54-1803.

Boxing and wrestling, §54-402.

Chiropractors, §54-703.

Physician assistant, §54-1803.**Plumbing, §54-2603.****Plumbing systems, §54-2604.****Podiatry, §54-602.****Polysomnographic technician.**

Respiratory care practice, §54-4303.

Polysomnographic trainee.

Respiratory care practice, §54-4303.

Polysomnography.

Respiratory care practice, §54-4303.

**Polysomnography related
respiratory care.**

Respiratory care practice, §54-4303.

DEFINED TERMS —Cont'd**Pool.**

Horse racing, §54-2502.

Practice.

Barbers, §54-502.

Practice of acupuncture, §54-4702.**Practice of architecture, §54-309.****Practice of audiology.**

Speech and hearing services
practitioners, §54-2903.

Practice of chiropractic, §54-703.**Practice of dental hygiene, §54-902.****Practice of dentistry, §54-901.****Practice of denturistry, §54-3303.****Practice of dietetics, §54-3505.****Practice of fitting and dealing in
hearing aids.**

Speech and hearing services
practitioners, §54-2903.

**Practice of marriage and family
therapy, §54-3401.****Practice of massage therapy,
§54-4002.****Practice of medicine, §54-1803.****Practice of midwifery, §54-5502.****Practice of nursing, §54-1402.****Practice of nursing home
administration, §54-1601.****Practice of occupational therapy,
§54-3702.****Practice of optometry, §54-1501.****Practice of pharmacy, §54-1704.****Practice of physical therapy,
§54-2203.****Practice of professional counseling,
§54-3401.****Practice of professional
engineering, §54-1202.****Practice of psychology, §54-2302.****Practice of residential care facility
administration.**

Residential care facility
administrators, §54-4202.

**Practice of respiratory care,
§54-4303.****Practice of speech-language
pathology.**

Speech and hearing services
practitioners, §54-2903.

Practice of telepharmacy, §54-1705.**Practice of telepharmacy across
state lines, §54-1705.****Practice of veterinary medicine,
§54-2103.****Practitioner.**

Pharmacists and pharmacy,
§54-1705.

DEFINED TERMS —Cont'd

Prearranged funeral plans,
§54-1139.

Preceptor.

Pharmacists and pharmacy,
§54-1705.

Preceptor site.

Pharmacists, §54-1705.

Precursor.

Pharmacists and pharmacy,
§54-1705.

Prepaid prearrangement sale or prearrangement sales contract.

Funeral or cemetery merchandise or services, §54-1131.

Prescription drug.

Wholesale drug distribution,
§54-1752.

Prescription drug order.

Pharmacists and pharmacy,
§54-1705.

Prescription drug or legend drug.

Pharmacists and pharmacy,
§54-1705.

Primary container.

Funeral or cemetery merchandise,
§54-1131.

Primary Idaho license.

Real estate brokers and salespersons,
§54-2004.

Producer.

Grape growers and wine producers commission, §54-3603.

Professional combatant.

Boxing and wrestling, §54-402.

Professional contest and professional exhibition.

Boxing and wrestling, §54-402.

Professional engineer, §54-1202.**Professional engineering, §54-1202.****Professional geologist, §54-2802.****Professional land surveying,**
§54-1202.**Professional land surveyor,**
§54-1202.**Professional services.**

Accountants, §54-206.

Professional sports services contract.

Athlete agents, §54-4802.

Professional supervision.

Veterinarians, §54-2103.

Professional wrestling.

Boxing and wrestling, §54-402.

Promoter.

Boxing and wrestling, §54-402.

Properly licensed.

Real estate brokers and salespersons,
§54-2038.

DEFINED TERMS —Cont'd**Prospective drug review.**

Pharmacists and pharmacy,
§54-1705.

Prototypical building.

Architects, §54-309.

Prototypical building documents.

Architects, §54-309.

Provider.

Health care provider profiles,
§54-4602.

Provisional license.

Real estate brokers and salespersons,
§54-2004.

Provisionally licensed dietician,
§54-3502.**Provisional permit.**

Residential care facility administrators, §54-4202.

Speech and hearing services practitioners, §54-2903.

Provisional residential care facility administrator.

Residential care facility administrators, §54-4202.

Psychological services, §54-2302.**Public.**

Engineers and surveyors, §54-1202.

Landscape architects, §54-3002.

Public cemetery, §54-1131.**Public drinking water system.**

Drinking water and wastewater professionals licenses, §54-2403.

Public entity.

Public works contractors, §54-1901.

Public wastewater system.

Drinking water and wastewater professionals licenses, §54-2403.

Public water system.

Drinking water and wastewater professionals licenses, §54-2403.

Public works construction,
§54-1901.**Public works contractors, §54-1901.****Pugilistic.**

Boxing and wrestling, §54-402.

Purchaser.

Funeral or cemetery merchandise or services, §54-1131.

Purse.

Boxing and wrestling, §54-402.

Qualifying charitable clinic or center.

Legend drug donation act, §54-1761.

Race meet.

Horse racing, §54-2502.

Racing jurisdiction.

Horse racing, §54-2502.

DEFINED TERMS —Cont'd**Real estate.**

Real estate appraisers, §54-4104.

Real estate appraisal, §54-4104.**Real estate appraiser, §54-4104.****Real estate broker, §54-2004.****Real estate related financial transaction.**

Real estate appraisers, §54-4104.

Real estate salesperson, §54-2004.**Real estate settlement procedures act.**

Real estate brokers and salespersons,
§54-2004.

Real property.

Real estate appraisers, §54-4104.

Records.

Athlete agents, §54-4802.

Pharmacists and pharmacy,
§54-1705.

Scrap dealers, §54-2701.

Referral.

Veterinarians, §54-2103.

Registered cosmetologist, §54-802.**Registered nurse anesthetist,
§54-1402.****Registered polysomnographic technologist.**

Practice of respiratory care,
§54-4303.

Registered pulmonary function technologist, §54-4303.**Registered respiratory therapist,
§54-4303.****Registration.**

Athlete agents, §54-4802.

Regular employee.

Veterinarians, §54-2103.

Regulated real estate transaction.

Real estate brokers and salespersons,
§54-2004.

Brokerage representation,
§54-2083.

Remote state.

Nurse licensure compact, §54-1418.

Remote state action.

Nurse licensure compact, §54-1418.

Repackage.

Wholesale drug distribution,
§54-1752.

Report.

Accountants, §54-206.

Representation.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

DEFINED TERMS —Cont'd**Representation agreement.**

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

Represented.

Real estate brokers and salespersons.
Brokerage representation,
§54-2083.

Resident.

Physicians and surgeons, §54-1803.

Residential care facility.

Residential care facility
administrators, §54-4202.

Residential care facility administrator, §54-4202.**Resident trainee.**

Morticians and funeral directors,
§54-1102.

Resident trainee license.

Morticians and funeral directors,
§54-1102.

Respiratory care.

Practice of respiratory care,
§54-4303.

**Respiratory care practitioner,
§54-4303.****Respiratory care protocols,
§54-4303.****Respiratory therapist, §54-4303.****Respiratory therapy, §54-4303.****Responsible broker.**

Real estate brokers and salespersons,
§54-2004.

Responsible charge.

Drinking water and wastewater
professionals licenses, §54-2403.
Engineers and surveyors, §54-1202.

Responsible charge operator.

Drinking water and wastewater
professionals licenses, §54-2403.

Responsible control.

Architects, §54-309.

Retail cosmetics dealer, §54-802.**Revoked license.**

Real estate brokers and salespersons,
§54-2004.

Ring official.

Boxing and wrestling, §54-402.

Rules of professional responsibility.

Engineers and surveyors, §54-1202.
Landscape architects, §54-3002.

Sales.

Pharmacists and pharmacy,
§54-1705.

DEFINED TERMS —Cont'd**Sales associate.**

Real estate brokers and salespersons,
§54-2004.

Brokerage representation,
§54-2083.

Salesperson.

Real estate brokers and salespersons,
§54-2004.

Sanctioning permit.

Boxing and wrestling, §54-402.

School of cosmetology, §54-802.**Scrap metal business.**

Scrap dealers, §54-2701.

Scrap metal processor.

Scrap dealers, §54-2701.

Scrap metal recycling center.

Scrap dealers, §54-2701.

Scrap metal supplier.

Scrap dealers, §54-2701.

Secondary container.

Funeral or cemetery merchandise,
§54-1131.

Secondary schools.

Boxing and wrestling, §54-402.

Seizure.

Notification of drug product selection
for epilepsy and seizure drugs,
§54-1770.

Shorthand reporting, §54-3102.**Signature.**

Surveys and surveyors, §54-1202.

Simulcast.

Horse racing, §54-2502.

Sleep disorder center or laboratory.

Respiratory care practice, §54-4303.

Social work, §54-3202.**Social worker, §54-3202.****Sole proprietor dentist, §54-936.****Source market fee.**

Pari-mutuel wagering, §54-2512.

Sparring.

Boxing and wrestling, §54-402.

**Specialty electrical contractor,
§54-1003A.****Specialty electrical trainee,
§54-1003A.****Specialty electrician, §54-1003A.****Specialty limited heating.**

Heating, ventilation and air
conditioning contractors,
§54-5003.

Speech-language pathologist.

Speech and hearing services
practitioners, §54-2903.

Speech-language pathologist aide.

Speech and hearing services
practitioners, §54-2903.

DEFINED TERMS —Cont'd**Speech-language pathologist assistant.**

Speech and hearing services
practitioners, §54-2903.

Standard design plan.

Surveys and surveyors, §54-1202.

State.

Accountants, §54-206.

Athlete agents, §54-4802.

State certified general real estate appraiser, §54-4104.**State certified residential real estate appraiser, §54-4104.****State licensed residential real estate appraiser, §54-4104.****State or jurisdiction.**

Real estate brokers and salespersons,
§54-2004.

State practice laws.

Nurse licensure compact, §54-1418.

Student.

Cosmetology, §54-802.

Driving businesses, §54-5402.

Student-athlete.

Athlete agents, §54-4802.

Student electrologist instructor.

Cosmetology, §54-802.

Substantial equivalency.

Accountants, §54-206.

Substantially equivalent.

Accountants, §54-206.

Successfully completed.

Real estate brokers and salespersons,
§54-2004.

Supervised experience.

Counselors and therapists, §54-3401.

Supervising physician, §54-1803.**Supervising veterinarian, §54-2103.****Supervision.**

Veterinarians, §54-2103.

Supportive personnel.

Physical therapy practice, §54-2203.

Surrendered license.

Real estate brokers and salespersons,
§54-2004.

Suspended license.

Real estate brokers and salespersons,
§54-2004.

Technical submissions.

Architects, §54-309.

Temporary permit.

Nursing home administrators,
§54-1601.

Psychologists, §54-2302.

Therapeutic nutrition care plan.

Dietitians, §54-3505.

DEFINED TERMS —Cont'd**Third party logistics provider.**

Wholesale drug distribution,
§54-1752.

Trainer.

Boxing and wrestling, §54-402.

Transaction.

Scrap dealers, §54-2701.

Trustee.

Funeral or cemetery merchandise or
services, §54-1131.

Unarmed combat.

Boxing and wrestling, §54-402.

**Unethical or unprofessional
conduct.**

Veterinarians, §54-2103.

University.

Boxing and wrestling, §54-402.

Unlicensed practice.

Veterinarians, §54-2103.

Unprofessional conduct.

Social workers, §54-3211.

Veterinarian, §54-2103.**Veterinarian on call, §54-2103.****Veterinary medical facility,
§54-2103.****Veterinary pharmacy.**

Wholesale drug distribution,
§54-1752.

Veterinary technician, §54-2103.**Veterinary technology, §54-2103.****Warehouseman.**

Pharmacists and pharmacy,
§54-1705.

Wastewater operator.

Drinking water and wastewater
professionals licenses, §54-2403.

Wastewater system.

Drinking water and wastewater
professionals licenses, §54-2403.

Wholesale distribution.

Wholesale drug distribution,
§54-1752.

Wholesale distributor.

Wholesale drug distribution,
§54-1752.

Wholesalers.

Pharmacists and pharmacy,
§54-1705.

Wills.

Prearranged funeral plans, §54-1142.

Winery.

Grape growers and wine producers
commission, §54-3603.

**Written registry and clinical
simulation examination.**

Respiratory care practice, §54-4303.

DEFINED TERMS —Cont'd**Year.**

Public works contractors, §54-1901.

DENTISTS, §§54-901 to 54-936.**Applicability of act.**

Exceptions, §54-930.

**Board of dentistry, §§54-907 to
54-913.****Certificates.**

Issuance by board, §54-913.

Lost or destroyed certificates,
§54-932.

Civil penalty.

Unlawful practice of dentistry,
§54-905.

Confidentiality of information.

Peer review committees.

Records, §54-934.

Conflicts of interest.

Board of dentistry, §54-909.

Criminal offenses.

Dental hygienists.

Unlawful practice of dental
hygiene, §54-906.

Licenses.

Revocation for convictions of crime,
§54-923.

Unlicensed practice of dentistry,
§54-905.

Death of sole proprietor dentist.

Continuation of practice, §54-936.

Definitions, §54-903.

Licenses.

Classifications of licenses, §54-920.

Practice of dental hygiene, §54-902.

Practice of dentistry, §54-901.

Dental assistants.

Defined, §54-903.

Dental hygienists.

Defined, §54-903.

Eligibility for examination, §54-915.

Examinations.

Eligibility, §54-915.

General supervision.

Authorization for procedures
performed under, §54-904.

Licenses.

Applicants licensed in another
state, §54-916A.

Display, §54-922.

Revocation for convictions of crime,
§54-923.

Other grounds, §54-925.

Nonresidents.

Issuance of license to applicants
licensed in another state,
§54-916A.

DENTISTS —Cont'd**Dental hygienists —Cont'd**

Practice of dental hygiene.

Defined, §54-902.

Practice of dentistry.

Authorization for practice under general supervision, §54-904.

Unlawful practice of dental hygiene, §54-906.

Previously qualified hygienists, §54-914.

Probation agreements, §54-925.

Purpose of chapter, §54-900.

Unlawful practice, §54-906.

Dental specialists.

Defined, §54-903.

Examination of candidates for licensure, §54-918.

Dentures.

Freedom of choice of dentures act, §§54-3301 to 54-3323.

Direct supervision.

Defined, §54-903.

Discovery.

Power of board to engage in, §54-912.

Display of license, §54-922.**Establishment of board, §54-907.****Examinations.**

Cheating, §54-919.

Dental hygienists.

Eligibility, §54-915.

Examinations in general dentistry and dental hygiene, §54-918.

Qualifications for examination, §54-915.

Record of applicants, §54-913.

Exceptions to act, §54-930.**Executive director of board, §54-912.****Fees.**

Board of dentistry fund.

Deposit of fees in fund, §54-910.

License fees.

Schedule, §54-920.

Licenses.

Application fee, §54-916.

Lost or destroyed certificates or licenses, §54-932.

Provisional licenses, §54-915.

Felonies.

Revocation of license for conviction of crime, §54-923.

Fines.

Unlawful practice of dental hygiene, §54-906.

Unlawful practice of dentistry, §54-905.

DENTISTS —Cont'd**Freedom of choice of dentures act, §§54-3301 to 54-3323.****Funds.**

Board of dentistry fund.

Creation, §54-910.

General supervision.

Defined, §54-903.

Dental hygienists.

Authorization for procedures performed under, §54-904.

Immunity from liability.

Peer review committees, §54-934.

Volunteer's license, §54-935.

Indirect supervision.

Defined, §54-903.

Injunctions.

Actions to enjoin violations, §54-933.

Dental hygienists.

Unlawful practice.

Conviction not to prevent issuance of injunction, §54-906.

Unlawful practice.

Conviction to prevent issuance of injunction, §54-905.

Inspection of offices or operating rooms.

Powers of board, §54-912.

Investigations.

Powers of board, §54-912.

Licenses.

Applications, §54-916.

Rejection, §54-917.

Biennial licenses, §54-920.

Classifications of licenses, §54-920.

Display, §54-922.

Expiration for failure to renew.

Reinstatement, §54-921.

Fees, §54-920.

Application fee, §54-916.

Lost or destroyed licenses, §54-932.

Grounds for revocation or suspension, §§54-924, 54-925.

Issuance by board, §54-913.

License with active status.

Defined, §54-920.

License with inactive status.

Defined, §54-920.

License with retirement status.

Defined, §54-920.

License with special status.

Defined, §54-920.

Lost or destroyed licenses, §54-932.

Notice of failure to renew, §54-920.

Provisional licenses.

Issuance by board, §54-915.

Reciprocity, §54-916B.

DENTISTS —Cont'd**Licenses —Cont'd**

- Reinstatement of expired license, §54-921.
- Rejection of applications, §54-917.
- Renewal, §54-920.
 - Expiration for failure to renew. Reinstatement, §54-921.
- Rights of licensees, §54-920.
- Suspension or revocation.
 - Grounds, §§54-924, 54-925.
 - Probation agreement, §54-924.
 - Revocation for convictions of crime, §54-923.
- Unlicensed practice of dentistry, §54-905.
- Volunteer's license, §54-935.

Lost or destroyed certificates or licenses, §54-932.**Meetings of board, §54-911.****Misdemeanors.**

- Licenses.
 - Revocation for conviction of crime, §54-923.
- Unlawful practice of dental hygiene, §54-906.
- Unlawful practice of dentistry, §54-905.

Notice.

- Failure of examination, §54-918.
- Vacancies on board, §54-908.

Peer entity assistance, §§54-4401 to 54-4407.**Peer review committees.**

- Confidentiality of records, §54-934.
- Established, §54-934.
- Purposes, §54-934.

Pharmacists and pharmacies.

- Delivery and administration of prescription drugs, §54-1721.

Physicians and surgeons.

- Act not construed as prohibiting physician or surgeon from treating diseases of the mouth, §54-930.

Powers and duties of board, §54-912.**Practice of dentistry.**

- Defined, §54-901.
- Dental hygienists.
 - Authorization for practice under general supervision, §54-904.
 - Unlawful practice of dental hygiene, §54-906.
- Unlawful practice, §54-905.

Previously qualified dentists, §54-914.**DENTISTS —Cont'd****Probation agreements, §54-924.**

- Dental hygienists, §54-925.

Purpose of chapter, §54-900.**Qualifications, §54-915.****Records.**

- Examinations.
 - Board to keep record of applicants, §54-913.
- Peer review committees.
 - Confidentiality of, §54-934.

Sole proprietor dental practice.

- Continuation of practice after death of dentist, §54-936.

State board of dentistry, §§54-907 to 54-913.**Subpoenas.**

- Power of board to issue, §54-912.

Unlawful practice of dentistry, §54-905.**Violations.**

- Injunctions.
 - Actions to enjoin violations, §54-933.

Volunteer's license, §54-935.**DENTURES.****Appeals.**

- Freedom of choice of dentures act.
 - Judicial review of board action, §54-3321.

Criminal offenses.

- Freedom of choice of dentures act.
 - Violations, §54-3319.

Definitions.

- Freedom of choice of dentures act, §54-3303.

Freedom of choice of dentures act, §§54-3301 to 54-3323.**Appeals.**

- Judicial review of board action, §54-3321.

Board of dentistry.

- Address.
 - Notice of board address, §54-3320.

- Compensation of members, §54-3308.

- Composition, §54-3307.

- Creation, §54-3307.

- Duties and powers, §54-3309.

- Fair practice committee, §54-3308.

- Judicial review of board action, §54-3321.

- Meetings, §54-3308.

- Members, §54-3307.

- Officers, §54-3308.

- Powers and duties, §54-3309.

DENTURES —Cont'd**Freedom of choice of dentures act —Cont'd**

Board of denturistry —Cont'd

Records, §54-3308.

Terms of office, §54-3307.

Vacancies, §54-3307.

Voting, §54-3308.

Citation of act, §54-3302.

Construction and interpretation.

Severability of provisions,
§54-3322.

Definitions, §54-3303.

Dentists.

Exceptions to chapter, §54-3305.

Denturist.

Defined, §54-3303.

Exceptions, §54-3305.

Fees.

Disposition of fees collected,
§54-3317.

Fee splitting, §54-3320.

Licenses, §§54-3310, 54-3312.

Guarantee on services, §54-3320.

Injunctions.

Violations of provisions, §54-3323.

Insurance.

Dental health insurance policies to
include denturist's services,
§54-3318.

Licenses.

Alcoholic beverages.

Grounds for suspension or
revocation of license,
§54-3314.

Applications, §54-3310.

Drugs.

Grounds for suspension or
revocation of license,
§54-3314.

Duration, §54-3313.

Examinations, §54-3311.

Fees, §54-3312.

Subjects, §54-3311.

Expiration, §54-3313.

Fees.

Application fees, §§54-3310,
54-3312.

Renewal fee, §54-3312.

Fraud.

Grounds for suspension or
revocation of license,
§54-3314.

Negligence.

Gross negligence.

Suspension or revocation of
license, §54-3314.

Reinstatement, §54-3316.

DENTURES —Cont'd**Freedom of choice of dentures act —Cont'd**

Licenses —Cont'd

Renewal, §54-3312.

Required, §54-3304.

Suspension or revocation,
§54-3314.Eligibility stayed by revocation,
§54-3315.

Reinstatement, §54-3316.

Revocation of license stays
eligibility, §54-3315.

Misdemeanors.

Violations, §54-3319.

Practice of denturistry.

Defined, §54-3303.

License required, §54-3304.

Prohibited activities, §54-3306.

Purpose of statute, §54-3301.

Receipts.

Disposition, §54-3317.

Severability of provisions, §54-3322.

Short title of act, §54-3302.

Statutory intent, §54-3301.

Violations.

Injunctions, §54-3323.

Misdemeanors, §54-3319.

Prohibited activities, §54-3306.

Gifts.

Freedom of choice of dentures act.

Making gifts to persons referring
patients, §54-3320.**Insurance.**

Freedom of choice of dentures act.

Dental health insurance policies to
include denturist's services,
§54-3318.**Misdemeanors.**

Freedom of choice of dentures act.

Violation of act constitutes
misdemeanor, §54-3319.**Notice.**

Freedom of choice of dentures act.

Notice of board address, §54-3320.

**DEPARTMENT OF
SELF-GOVERNING AGENCIES.****Division of building safety.**Heating, ventilation and air
conditioning contractors.

Exclusive jurisdiction, §54-5015.

Inspection of work authorized by
permit, §§54-5018 to 54-5021.Powers and duties of
administrator, §54-5006.

DEPOSITIONS.**Podiatrists.**

License suspension or revocation proceedings, §54-610.

Real estate appraisers.

Disciplinary proceedings.

Powers of board, §54-4107.

Shorthand reporters.

Taking of oral depositions.

Exceptions to certification requirement, §54-3104.

DEPOSITS.**Occupational therapists.**

Fees, §54-3719.

Podiatrists.

Money deposited in state treasury, §54-615.

Racing.

Licensee's right to withhold, §54-2516.

Pari-mutuel system.

Distribution of deposits, §54-2513.

Dog racing, §54-2514.

DESIGN PROFESSIONALS.**Architects, §54-301 to 54-316.****DIETITIANS, §§54-3501 to 54-3512.****Applicability of provisions.**

Exceptions, §54-3512.

Board of medicine.

Definitions of "board," §54-3502.

Duties, §54-3505.

Rules and regulations, §54-3505.

Definitions, §54-3502, 54-3505.**Dietetic licensure board, §§54-3504, 54-3505.**

Definition of "licensure board," §54-3502.

Examinations for licensure, §54-3507.

Waiver, §54-3508.

Exceptions to provisions, §54-3512.**Legislative declaration, §54-3501.****Licenses.**

Applications, §54-3506.

Examinations, §54-3507.

Waiver of examination, §54-3508.

Expiration, §54-3509.

Qualifications, §54-3506.

Waiver of requirements, §54-3508.

Renewal, §54-3509.

Required, §54-3503.

Revocation or suspension, §54-3510.

Misdemeanors.

Violations of provisions, §54-3511.

Purpose of provisions, §54-3501.**Rules and regulations.**

Board of medicine, §54-3505.

DISABILITIES, PERSONS WITH.**Health professional peer entity**

assistance, §§54-4401 to 54-4407.

Physicians and surgeons.

Disabled physician act, §§54-1831 to 54-1841.

DISABLED PHYSICIANS, §§54-1831 to 54-1841.**DISCOVERY.****Dentists.**

Power of board to engage in, §54-912.

Health professional peer entity assistance.

Records and proceedings not subject to, §54-4403.

DISEASES.**Chiropractors.**

Communicable, contagious or infectious disease endangering health of patients.

Grounds for suspension or revocation of license, §54-712.

Compliance with regulations relating to control of contagious and infectious diseases, §54-714.

Optometrists.

Contagious diseases which endanger the health of patients.

Grounds for revocation of license, §54-1510.

Infectious diseases.**Optometrists.**

Infectious diseases which endanger the health of patients.

Grounds for revocation of license, §54-1510.

Optometrists.

Communicable, contagious or infectious diseases which endanger the health of patients.

Grounds for revocation of license, §54-1510.

DISTRICT COURTS.**Morticians, funeral directors and embalmers.**

Injunctions against violations of act, §54-1127.

Optometrists.**Injunctions.**

Procedure for obtaining injunction, §54-1524.

Revocation or suspension of license.

Action in district court, §54-1512.

Public works contractors.

Court review of board decisions, §54-1916.

DOCTOR-PATIENT PRIVILEGE.

Informal consultations, no physician-patient relationship established, §54-1821.

DOG RACING, §§54-2514, 54-2514A.

DOGS.

Racing, §§54-2514, 54-2514A.

DONATIONS.**Prescription drugs.**

Legend drug donation act, §§54-1760 to 54-1765.

DRINKING WATER.**Water supply and waterworks.**

Drinking water and wastewater professionals licenses, §§54-2401 to 54-2414.

DRIVER EDUCATION.

Driving businesses, §§54-5401 to 54-5409.

DRIVING BUSINESSES, §§54-5401 to 54-5409.

Continuing education.

Rules adopted by board, §54-5403.

Curriculum components, §54-5407.

Definitions, §54-5402.

Disciplinary action, §54-5408.

Driving instructors.

Fingerprint-based criminal history check.

License applicant or licensee to obtain, §54-5406.

Licenses.

Qualifications, §54-5406.

Fingerprint-based criminal history check.

Driving instructors.

License applicant or licensee to obtain, §54-5406.

Licensee to obtain.

License granted without check, §54-5405.

Injunctions.

Unlawful operation, §54-5409.

Inspections and audits of licensed business.

Authority of board, §54-5403.

Legislative declaration, §54-5401.

Licenses.

Applications, §54-5405.

Curriculum components to accompany, §54-5407.

Driving instructors, §54-5406.

Denial.

Disciplinary action generally, §54-5408.

**DRIVING BUSINESSES —Cont'd
Licenses —Cont'd**

Driving instructors.

Qualifications, §54-5406.

Fees, §54-5404.

Fingerprint-based criminal history check.

Application to include, §54-5405.

Driving instructors, §54-5406.

Required, §54-5405.

Revocation or suspension.

Disciplinary action generally, §54-5408.

Licensure board.

Established, §54-5403.

Meetings, §54-5403.

Members, §54-5403.

Powers and duties, §54-5403.

Prohibited acts, §54-5409.

Rules and regulations.

Promulgation by board, §54-5403.

Title of act, §54-5401.

DRUGGISTS, §§54-1701 to 54-1759.

DRUG OR DEVICE OUTLETS, §54-1729 to 54-1732.

DRUGS.**Health professional peer entity**

assistance, §§54-4401 to 54-4407.

Idaho wholesale drug distribution act, §§54-1751 to 54-1759.

Pharmacists and pharmacies.

General provisions, §§54-1701 to 54-1759.

Wholesale drug distribution act, §§54-1751 to 54-1759.

DRUNKENNESS.**Psychologists.**

Grounds for revocation of license, §54-2309.

Social workers.

Grounds for suspension or revocation of license, §54-3211.

E**EARS.****Speech and hearing services**

practitioners, §§54-2901 to 54-2927.

EDUCATION.**Boxing, sparring and wrestling.**

Exemption of events conducted by schools, §54-406.

Driver education.

Driving businesses, §§54-5401 to 54-5409.

EDUCATION —Cont'd**Pharmacists and pharmacies.**

Continuing education, §54-1725.

Residential or assisted living facility administrators.

Continuing education, §54-4209.

Educational programs, §54-4208.

Speech and hearing services practitioners.

Persons working in public schools.

License exemption, §54-2905.

ELECTRICAL CONTRACTORS**AND JOURNEYMEN, §§54-1001 to 54-1019.****Apprentices.**

Continuation training, §54-1007.

Defined, §54-1003A.

Journeyman examination.

Eligibility to take, §54-1007.

Registration, §54-1010.

Duration, §54-1008.

Fees, §54-1014.

Certificates of competency.

Prior certificate holders entitled to license, §54-1010.

Civil penalties, §54-1017.**Construction and interpretation.**

Separability of provisions, §54-1018.

Construction contractors.

Registration requirements, §§54-5201 to 54-5219.

Criminal offenses.

Violations of provisions generally, §54-1017.

Declaration of policy, §54-1001.**Defective installations.**

Notice of defects, §54-1004.

Definitions, §54-1003A.**Director of department of labor.**

Disconnecting electrical service, §54-1004.

Inspections.

Electrical installations, §54-1004.

Rules and regulations, §54-1005.

Disconnecting electrical service.

Authority of director, §54-1004.

Electrical board.

Compensation of members, §54-1006.

Composition, §54-1006.

Created, §54-1006.

Fees.

Establishment of fees charged for permits and inspections of electrical systems, §54-1006.

Meetings, §54-1006.

Members, §54-1006.

Office, §54-1006.

ELECTRICAL CONTRACTORS**AND JOURNEYMEN —Cont'd****Electrical board —Cont'd**

Officers, §54-1006.

Rules.

Authority, §54-1006.

Terms of office, §54-1006.

Electrical board fund, §54-1015.**Enforcement of provisions of chapter.**

Inspectors, §54-1019.

Exceptions to act, §54-1016.**Fees.**

Electrical board.

Establishment of fees charged for permits and inspections, §54-1006.

Inspection fees, §54-1005.

Licenses.

Renewal fees, §54-1014.

Schedule of fees, §54-1014.

Fund, §54-1015.**Hearings.**

Revocation or suspension of license, §54-1009.

Inspections.

Director to inspect electrical installations, §54-1004.

Fees, §54-1005.

Modular buildings, §54-1001D.

Municipal corporations.

Inspections within municipalities.

When authorized, §54-1001C.

Provisions inapplicable when installation covered by municipal ordinance, §54-1001B.

Tags, §54-1005.

Inspectors.

Appointment, §54-1019.

Duties.

Enforcement of provisions, §54-1019.

Qualifications, §54-1019.

Installations by contractor performed by licensed journeymen, §54-1010.**Legislative declaration, §54-1001.****Liability insurance.**

Failure to maintain, §54-1009.

Proof of insurance required for license renewal, §54-1013.

Licenses of registrations.

Acting as electrician without license, §54-1002.

Duration, §54-1008.

Exemptions, §54-1016.

Expiration, §54-1008.

ELECTRICAL CONTRACTORS AND JOURNEYMEN —Cont'd

Licenses of registrations —Cont'd

- Fees.
 - Schedule of fees, §54-1014.
 - Inactive licenses, §54-1013.
- Issuance, §54-1007.
 - Administrator authorized to issue, §54-1003.
- Prior certificate holders entitled to license, §54-1010.
- Reciprocity, §54-1007.
- Renewal, §54-1013.
- Required, §54-1002.
- Revocation or suspension.
 - Power of administrator, §54-1009.
- Transferability, §54-1003.

List of electricians in contractor's employ, §54-1010.

Maintenance electricians.

- Defined, §54-1003A.

Master journeyman electrician.

- Defined, §54-1003A.

Misdemeanors.

- Violations of act constitute misdemeanor, §54-1017.

Modular building inspections, §54-1001D.

- Exceptions to act, §54-1016.

Municipal corporations.

- Inspections.
 - Provisions inapplicable when installation covered by municipal ordinance, §54-1001B.
 - When inspections within municipalities authorized, §54-1001C.

National electrical code.

- Declaration of policy, §54-1001.

Notice.

- Defective installations, §54-1004.

Rules and regulations.

- Authority of director, §54-1005.
- Electrical board.
 - Authority, §54-1006.

Separability of provisions, §54-1019.

Specialty electricians.

- Defined, §54-1003A.

States.

- Licenses.
- Reciprocity, §54-1007.

Violations.

- Each day of violation constitutes separate offense, §54-1017.
- Misdemeanors, §54-1017.

Worker's compensation insurance.

- Failure to maintain, §54-1009.

ELECTRICAL CONTRACTORS AND JOURNEYMEN —Cont'd

Worker's compensation insurance —Cont'd

- Proof of insurance required for license renewal, §54-1013.

ELECTRIC POWER.

Contractors.

- Electrical contractors and journeymen, §§54-1001 to 54-1019.

Electrical contractors and journeymen, §§54-1001 to 54-1019.

Inspections.

- Modular buildings, §54-1001D.
- Municipal corporations.
 - Ordinances.
 - Inspection provisions inapplicable when installation covered by ordinance, §54-1001B.
 - When inspections within municipalities authorized, §54-1001C.

Installation of wires and equipment.

- Compliance with national electrical code, §54-1001.

Municipal corporations.

- Inspections.
 - Provisions inapplicable when installation covered by municipal ordinance, §54-1001B.
 - When authorized, §54-1001C.

National electrical code.

- Legislative declaration, §54-1001.

ELECTRONIC SIGNATURES AND FILINGS.

Student athlete agents, §54-4819.

EMBALMERS.

Morticians, funeral directors and embalmers, §§54-1101 to 54-1144.

EMERGENCIES.

Boxing, sparring and wrestling.

- Medical emergency requirements, §54-421.

Nurses.

- Exceptions to license requirements, §54-1412.

Physicians and surgeons.

- Persons rendering aid in emergency.
 - Unlicensed practice, §54-1804.

EMERGENCY MEDICAL TECHNICIANS.

Boxing, sparring and wrestling.

Medical emergencies.

Paramedical units required to be present at arena, §54-421.

ENGINEERS, §§54-1201 to 54-1236.

Appeals.

Persons aggrieved by actions of board, §54-1225.

Attorney general.

Board of licensure.

Legal counsel for board, §54-1222.

Board of licensure.

Appeals.

Persons aggrieved by action of board, §54-1225.

Appointment, §54-1203.

Compensation of members, §54-1205.

Composition, §54-1203.

Created, §54-1203.

Expenses, §54-1205.

Legal counsel, §54-1222.

Meetings, §54-1207.

Officers, §54-1207.

Organization, §54-1207.

Powers, §54-1208.

Qualifications of members, §54-1204.

Receipts and disbursement, §54-1209.

Records, §54-1210.

Registration of members, §54-1204.

Removal of members, §54-1206.

Reports, §54-1210.

Secretary.

Receipts and disbursements, §54-1209.

Roster, §54-1211.

Terms of office, §54-1203.

Vacancies, §54-1206.

Construction and interpretation.

Saving clause, §54-1223.

Separability of provisions, §54-1226.

Consulting engineer.

Defined, §54-1202.

Corporations.

Certification fee, §54-1213.

Practice of professional engineering, §54-1235.

Criminal offenses.

Violations generally, §54-1222.

Declaration of policy, §54-1201.

Definitions, §54-1202.

Examinations.

Failures, §54-1214.

Fees, §§54-1213, 54-1214.

General requirements, §54-1212.

ENGINEERS —Cont'd

Examinations —Cont'd

Scope of examination, §54-1214.

Subjects, §54-1214.

When and where held, §54-1214.

Exemptions, §54-1223.

Fees.

Comity licensure, §54-1219.

Examinations, §54-1214.

Licenses, §54-1213.

Renewal of licenses, §54-1216.

Fraud.

Disciplinary action, §54-1220.

Hearings.

Disciplinary action, §54-1220.

Intern certificates.

Issuance, §54-1215.

Reissuance, §54-1221.

Joint stock associations.

Fees.

Certification fee, §54-1213.

Legislative declaration, §54-1201.

Licenses.

Applications.

Forms, §54-1213.

Comity licensure, §54-1219.

Disciplinary action, §54-1220.

Expiration, §54-1216.

Fees, §54-1213.

General requirements, §54-1212.

Issuance, §54-1215.

Jurisdiction of state, §54-1236.

Reissuance, §54-1221.

Renewal, §54-1216.

Mines and mining.

Mining claim location.

Exemptions from act, §54-1223.

Misdemeanors.

Violations generally, §54-1222.

Negligence.

Disciplinary action, §54-1220.

Nonresidents, §54-1223.

Practice of engineering.

Defined, §54-1202.

Professional engineers.

Defined, §54-1202.

Public works.

Preparation of plans, specifications and estimates by professional engineer required, §54-1218.

Records.

Board of licensure.

Record of proceedings, §54-1210.

Responsible charge.

Defined, §54-1202.

Roster.

Publication by secretary of board, §54-1211.

ENGINEERS —Cont'd**Rules of professional responsibility.**

Defined, §54-1202.

Saving clause, §54-1223.**Seals.**

Use and design, §54-1215.

Separability of provisions, §54-1226.**States.**

Comity licensure, §54-1219.

Successor licensees, completion of project, §54-1223.**Surveys.**

Authority and duties of professional engineers, §54-1227.

Violations.

Penalties, §54-1222.

Prosecution of offenses, §54-1222.

EPILEPSY.**Notification of drug product selection for epilepsy and seizure drugs, §54-1770.****ERRORS AND OMISSIONS INSURANCE.****Real estate brokers and salespersons, §54-2013.****EUTHANASIA.****Veterinarians.**

Certified euthanasia task force, §54-2105.

Certified euthanasia technician.

Defined, §54-2103.

Exception to license requirement, §54-2104.

EVIDENCE.**Abstracters of title.**

Use of abstracts in actions, §54-103.

Architects.

Licenses.

Certified copies as evidence, §54-306.

Health professional peer entity assistance.

Records and proceedings of entities not subject to discovery or subpoena, §54-4403.

Nursing home administrators.

Board of examiners.

Board not bound by strict rules of evidence, §54-1604.

Pharmacists and pharmacies.

Proof that drug is prescription drug or legend drug, §54-1738.

Physicians and surgeons.

Prima facie evidence of negligence, §54-1804.

EVIDENCE —Cont'd**Prescriptions.**

Proof of facts contained in public records.

Status of prescription drugs, §54-1738.

Privileged communications.

Health professional peer assistance, §54-4403.

Physician and psychotherapist-patient privilege.

Informal consultations, no physician-patient relationship established, §54-1821.

Psychotherapist-patient privilege, §54-2314.

Social worker-client privilege, §54-3213.

Psychologists.

Privileged communications between psychologist and client, §54-2314.

Scrap dealers.

Nonferrous or stainless steel metal property.

Preserving evidence of metal theft, §54-2706.

Social workers.

Privileged communications, §54-3213.

EXAMINATIONS.**Architects.**

Board of architectural examiners.

Examinations conducted by board, §54-303.

Licenses.

Required for license, §54-301.

Qualifications, §54-302.

Regular examinations, §54-303.

Barbers.

Applicants, §54-509.

Areas covered on exam, §54-510.

Board of examiners to conduct examinations, §54-510.

Persons having practiced in another state or country.

Examination may be required, §54-512.

Chiropractors.

Failure to pass examination, §54-709.

Personal interview by board, §54-709.

Required, §54-709.

Cosmeticians.

Fees.

Schedule of fees, §54-818.

Scope of examination, §54-810.

Dentists, §54-918.

Cheating, §54-919.

EXAMINATIONS —Cont'd**Dentists —Cont'd**

- Dental hygienists.
- Eligibility, §54-915.
- Qualifications for examination, §54-915.
- Reciprocity, §54-916B.
- Record of applicants, §54-913.

Dentures.

- Freedom of choice of dentures act, §§54-3311, 54-3312.

Engineers.

- Applications.
- Fees, §54-1213.
- Failures, §54-1214.
- Fees, §§54-1213, 54-1214.
- General requirements, §54-1212.
- Scope of examination, §54-1214.
- Subjects, §54-1214.
- When and where held, §54-1214.

Geologists.

- Qualifications for registration, §54-2812.
- Reexamination, §54-2814.
- Scope, §54-2814.
- Time and place, §54-2814.
- Waiver of examination requirement, §54-2812.

Heating, ventilation and air conditioning contractors,
§54-5010.

- Fees, §54-5012.

Landscape architects.

- Annual examinations, §54-3003.

Morticians, funeral directors and embalmers.

- Certification of results, §54-1108.
- Grading by board, §54-1108.
- Persons holding current valid license in other states or territories.
- Granting license without examination, §54-1109.
- Powers of board of morticians, §54-1108.
- Subjects, §54-1108.

Nursing home administrators.

- Administrators in training.
- Examination after one year, §54-1610.
- Frequencies, §54-1606.
- Qualifications for examination, §54-1605.
- Subject matter, §54-1606.
- Where and when held, §54-1606.

Occupational therapists.

- Licensure, §§54-3706, 54-3708.

Optometrists.

- Applications, §54-1519.

EXAMINATIONS —Cont'd**Optometrists —Cont'd**

- Conduct of examination, §54-1521.
- Fees, §54-1523.
- Qualifications of applicants, §54-1520.
- Subjects included, §54-1521.

Pharmacists and pharmacies.

- Qualifications for licensure by examination, §54-1722.

Physicians and surgeons.

- Disabled physicians.
- Committee, §54-1834.
- Duties of board of medicine, §54-1833.
- Failures, §54-1810.
- Graduates of medical schools located outside of United States and Canada, §54-1812.
- Personal interviews, §54-1810.
- Written examinations.
- Licensure by written examination, §54-1810.

Podiatrists, §54-606.

- Licensed persons.
- By indorsement, §54-613.
- No examination required, §54-612.
- Subjects, §54-606.

Psychologists.

- Applications.
- Applicants for whom examination may be required, §54-2307.
- Granting license without examination, §54-2312.

Real estate appraisers.

- Fees, §54-4113.
- Qualification for licensure or certification, §54-4110.
- Regular examinations for licensure or certification, §54-4112.
- Required for issuance of license or certificate, §54-4102.

Real estate brokers and salespersons.

- License examinations, §54-2014.

Residential care facility administrators.

- Licenses, §§54-4206, 54-4207.

Shorthand reporters.

- Applications, §54-3111.
- Certification without examination, §54-3108.
- Fees, §54-3110.
- Notice, §54-3111.
- Preparation, administration and grading, §54-3111.
- Prerequisite to certificate, §54-3108.
- When and where held, §54-3111.

EXAMINATIONS —Cont'd**Surveys and surveyors.**

Applications.

Fees, §54-1213.

General requirements, §54-1212.

Qualifications of applicants,
§54-1212.

Scope, §54-1214.

Subjects, §54-1214.

When and where held, §54-1214.

Veterinarians.Temporary permit without
examination, §54-2111.**EXECUTORS AND****ADMINISTRATORS.****Dead bodies.**

Disposition, §54-1118.

**Morticians, funeral directors and
embalmers.**

Disposition of bodies, §54-1118.

EXEMPTIONS.**Engineers, §54-1223.****EYES.****Optometrists, §§54-1501 to 54-1525.****F****FACSIMILE TRANSMISSIONS.****Pharmacists and pharmacies.**Electronic transmission of
prescription drug orders,
§54-1733.**Real estate brokers and
salespersons.**Electronically generated agreements,
§54-2052.Brokerage representation
agreements, §54-2050.**FAIRS.****Racing.**

Exemption from fee payment.

Fair boards and fair districts
exempt from payment of fees,
§54-2515.**FALSE TEETH.****Freedom of choice of dentures act,
§§54-3301 to 54-3323.****FEDERAL AID.****Nursing home administrators.**Administration of federal funds by
board, §54-1607.**Public works contractors.**

Funds.

Defined, §54-1901.

FEES.**Abstracters of title.**

Certificates, §54-105.

Accountants.

General fees, §54-212.

Licensed as certified public
accountant, §54-211.**Architects.**

Licenses, §54-304.

Barbers.

Barber colleges, §54-518.

Certificate of registration, §54-518.

Boxing, sparring and wrestling.Fees for sanctioning organizations,
§54-406.**Chiropractors.**

Licenses, §54-708.

Examinations, §54-709.

Indorsement, §54-710.

Construction contractors.Application for registration,
§54-5210.

Deposition of receipts, §54-5212.

**Construction management
licensing.**

Schedule of fees, §54-4510.

Cosmeticians.Deposit of fees in state treasury,
§54-823.

Licenses.

Application fee, §54-809.

Renewal or reinstatement, §54-815.

Permits.

Temporary permits to practice,
demonstrate or teach
cosmetology, §54-827.

Renewal fees, §54-815.

Schedule of fees, §54-818.

Counselors and therapists.Distribution of fees collected,
§54-3412.

Licenses, §54-3411.

Dentists.

Board of dentistry fund.

Deposit of fees in fund, §54-910.

License fees.

Schedule, §54-920.

Licenses.

Application fee, §54-916.

Lost or destroyed certificates or
licenses, §54-932.

Provisional licenses, §54-915.

Dentures.

Freedom of choice of dentures act.

Disposition of fees collected,
§54-3317.

Fee splitting, §54-3320.

Licenses, §§54-3310, 54-3312.

FEES —Cont'd**Driving businesses.**

Licenses, §54-5404.

Electrical contractors and journeymen.

Inspection fees, §54-1005.

Licenses.

Renewal fees, §54-1014.

Schedule of fees, §54-1014.

Engineers.

Comity licensure, §54-1219.

Examinations, §54-1214.

Licenses, §54-1213.

Renewal of licenses, §54-1216.

Geologists.

Reexamination fee, §54-2814.

Registration, §54-2813.

Renewal of certificate, §54-2816.

Heating, ventilation and air conditioning contractors.

Apprentices, §54-5012.

Permits authorizing work.

Application fee, §54-5017.

Landscape architects.

Licenses, §54-3003.

Liquefied petroleum gas.

License fees, §§54-5308, 54-5313,
54-5314.

Massage therapists, §54-4008.**Midwives, §54-5509.****Morticians, funeral directors and embalmers.**

Licenses, §54-1115.

Reinstatement, §54-1115A.

Naturopathic physicians.

License fee, §54-5111.

Nurses.

Licenses.

Renewal, §54-1411.

Practical nurses.

Licenses, §54-1407.

Registered nurses.

Licenses, §54-1408.

State board of nursing fund.

Deposit of fees collected, §54-1405.

Nursing home administrators.

Disposition of fees, §54-1616.

Licenses.

Applications, §54-1604.

Occupational therapists.

Deposit, §54-3719.

Licenses, §54-3712.

Issuance upon payment, §54-3710.

Optometrists.

Examinations, §54-1523.

Failure to pay fees.

Grounds for revocation of license,
§54-1510.

FEES —Cont'd**Optometrists —Cont'd**

Licenses.

Renewal, §54-1506.

Pharmacists and pharmacies.

Board of pharmacy.

Determination of fees to be
collected, §54-1720.

Registration.

Certificates, §54-1730.

Physical therapy practice.

Licenses, §54-2207.

Physicians and surgeons.

Board of medicine fund.

Deposit of fees collected into fund,
§54-1809.

Fee or gift splitting.

Grounds for medical discipline,
§54-1814.

Licenses.

Inactive license fee, §54-1808.

Plumbing and plumbers.

Application and registration fee,
§54-2614.

Application for permit, §54-2623.

Inspection fee, §54-2623.

Certificates of competency, §54-2616.

Inspections.

Reinspection, §54-2626.

Municipal fees for permits and
inspections, §54-2619.

Exceptions, §54-2619.

Permits, §54-2623.

Reinspections, §54-2626.

Podiatrists.

Licenses.

Application fee, §54-606.

By indorsement, §54-613.

Reinstatement of license, §54-607.

Renewal, §54-607.

Moneys deposited in state treasury,
§54-615.

Psychologists.

License application fee, §54-2307.

Licenses, §54-2312.

Renewal of license, §54-2315.

Public works contractors.

Licenses.

Classes of licenses, §54-1904.

Fund.

Deposit of fees collected,
§54-1921.

Renewal fees, §54-1904.

Refunds, §54-1911.

Racing.

Exemption from fee payment,
§54-2515.

Licenses, §54-2506.

FEES —Cont'd**Racing —Cont'd**

Race meets, §54-2508.

Real estate appraisers.

Licenses or certificates, §54-4113.

Real estate brokers and**salespersons.**

Finder's fees prohibited, §54-2054.

Licenses, §54-2020.

Disposition of fees collected,
§54-2021.

Examinations, §54-2014.

Nonrefundable, §54-2018.

Prohibited acts as to fees, §54-2054.

Spitting fee with unlicensed person
prohibited, §54-2054.

Residential care facility**administrators.**

Licenses or provisional permits,
§54-4205.

Reinstatement of license, §54-4209.

**Residential or assisted living
facility administrators.**

Licenses, §54-4205.

Shorthand reporters.

Application fees, §54-3110.

Deposit into fund, §54-3117.

Examination fee, §54-3110.

Renewal fees, §54-3110.

Schedule of fees, §54-3110.

Social workers.

Deposit in state treasury, §54-3205.

License fees, §54-3209.

Student athlete agents.

Registration, §54-4809.

Surveys and surveyors.

Licenses, §54-1213.

Renewal, §54-1216.

Veterinarians.

Licenses.

Applications, §54-2107.

Water supply and waterworks.

Drinking water and wastewater
professionals licenses, §54-2407.

FEET.**Podiatrists, §§54-601 to 54-615.****FELONIES.****Chiropractors.**

Suspension or revocation of license.

Grounds, §54-712.

Dentists.

Revocation of license for conviction of
crime, §54-923.

Geologists.

Grounds for denial or suspension of
certificate, §54-2819.

FELONIES —Cont'd**Landscape architects.**

Grounds for revocation or suspension
of registration, §54-3004.

**Morticians, funeral directors and
embalmers.**

Grounds for denial, suspension or
revocation of licenses, §54-1116.

Pharmacists and pharmacies.

Dispensing or delivering legend
drugs, §54-1732.

Physicians and surgeons.

Conviction of felony grounds for
medical discipline, §54-1814.

Unlicensed practice, §54-1804.

Racing.

Lures.

Live lures for racing dogs,
§54-2509.

Scrap dealers.

Nonferrous or stainless steel metal
property.

Unlawful violations, §54-2707.

Shorthand reporters.

Grounds for suspension or
revocation, §54-3112.

Social workers.

Grounds for suspension or revocation
of license, §54-3211.

Veterinarians.

Grounds for revocation or suspension
of license, §54-2113.

FIDUCIARIES.**Dead bodies.**

Disposition of dead bodies, §54-1118.

**Morticians, funeral directors and
embalmers.**

Disposition of bodies.

Authority of fiduciaries, §54-1118.

**Real estate brokers and
salespersons.**

Brokerage representation.

Representation not fiduciary in
nature, §54-2094.

FINES AND OTHER PENALTIES.**Accountants.**

Administrative penalty, §54-219.

Architects.

Violation of provisions, §54-310.

Barbers.

Prohibited acts, §54-519.

Boxing, sparring and wrestling.

Conducting events without license,
§54-420.

Failure to pay delinquent tax,
§54-419.

Sham contests, §54-418.

FINES AND OTHER PENALTIES

—Cont'd

Boxing, sparring and wrestling

—Cont'd

Violations of rules, §54-418.

Cemeteries.

Prepaid cemetery merchandise or services.

Violations of provisions, §54-1138.

Chiropractors.

Administrative fine for discipline, §54-713.

Unlicensed practice, §54-705.

Construction contractors.

Unregistered contractors, §54-5217.

Construction management licensing, §54-4513.**Dentists.**

Unlawful practice of dental hygiene, §54-906.

Unlawful practice of dentistry, §54-905.

Electrical contractors and journeymen.

Civil penalties, §54-1017.

Engineers.

Violations, §54-1222.

Funeral merchandise or services.

Prepaid funeral merchandise or services.

Violations of provisions, §54-1138.

Geologists.

Violation of provisions, §54-2819.

Landscape architects.

Violations, §54-3005.

Liquefied petroleum gas.

Unlicensed dealers, §54-5316.

Morticians, funeral directors and embalmers.

Prepaid funeral or cemetery merchandise or services.

Violations of statutory provisions, §54-1138.

Naturopathic physicians.

Unlicensed practice, §54-5117.

Nurses.

Violations of section, §54-1414.

Optometrists.

Unlicensed practice, §54-1502A.

Pharmacists and pharmacies.

Confidentiality violations, §54-1727.

Drug outlets.

Violations, §54-1732.

Imposition by board, §54-1728.

Legend drugs.

Violations, §54-1732.

Out-of-state mail service pharmacies.

Violations of provisions, §54-1748.

FINES AND OTHER PENALTIES

—Cont'd

Pharmacists and pharmacies

—Cont'd

Unlawful practice of pharmacy, §54-1721.

Wholesale drug distribution, §54-1759.

Physical therapy practice, §54-2223.**Physicians and surgeons.**

Unlicensed practice, §54-1804.

Psychologists.

Violations, §54-2310.

Public works contractors.

Penalties for violations, §54-1920.

Racing.

Pari-mutuel system.

Interstate simulcast signal transmissions.

Anticompetitive or deceptive practices prohibited, §54-2512.

Violations, §54-2509.

Real estate appraisers.

Violations of provisions, §54-4119.

Real estate brokers and salespersons.

Acting without license, §54-2065.

Shorthand reporters.

Penalties for violations, §54-3118.

Speech and hearing services practitioners.

Disciplinary action against licensees, §54-2925.

Unlawful practice, §54-2927.

Student athlete agents.

Administrative penalty, §54-4817.

Surveys and surveyors.

Defacing permanent boundary markers, §54-1234.

Violations, §54-1222.

Veterinarians.

Practicing veterinary medicine without license, §54-2118.

Water supply and waterworks.

Drinking water and wastewater professionals licenses, §54-2413.

FINGERPRINTS.**Certified medication assistant (MA-C), §54-1406A.****Nurses.**

Certified medication assistant (MA-C), §54-1406A.

License requirements, §54-1401.

Pharmacists.

Applicants for license.

Fingerprint-based criminal history records check, §54-1718.

FINGERPRINTS —Cont'd**Physicians and surgeons.**

Applicants for license.

Fingerprint-based criminal history records check, §§54-1810, 54-1811.

Real estate brokers and salespersons.

Licenses.

Requirements for individual primary license, §54-2012.

FIXING ATHLETIC CONTESTS.**Boxing, sparring and wrestling.**

Sham events.

Forfeiture of license, §54-417.

Suspension from participating in contests, §54-418.

FLOOD CONTROL DISTRICTS.**Construction contractors.**

Water delivery or water management entities.

Exemption from act, §54-5205.

FOREIGN MEDICAL SCHOOLS.**Graduates of schools located outside of United States and Canada.**

Requirements, §54-1812.

FORFEITURES.**Boxing, sparring and wrestling licenses.**

Failure to pay delinquent tax, §54-419.

Sham events and participation in purse, §54-417.

FORGERY AND**COUNTERFEITING.****Geologists.**

Certificates of registration, §54-2821.

FORMS.**Scrap dealers.**

Nonferrous or stainless steel metal property.

Purchasing or receiving from general public, §54-2702.

FRAUD.**Accountants.**

Certificate or license restriction, revocation, suspension or denial, §54-219.

Architects.

Licenses.

Grounds for revocation or suspension, §54-305.

FRAUD —Cont'd**Chiropractors.**

Licenses.

Suspension or revocation of license. Grounds, §54-712.

Construction management licensing.

Grounds for disciplinary proceedings, §54-4508.

Counselors and therapists.

Disciplinary proceedings, §54-3407.

Dentures.

Freedom of choice of dentures act, §54-3314.

Engineers.

Disciplinary action, §54-1220.

Geologists.

Suspension or revocation of certificate, §54-2819.

Landscape architects.

Grounds for revocation or suspension of registration, §54-3004.

Morticians, funeral directors and embalmers.

Grounds for denial, suspension or revocation of licenses, §54-1116.

Naturopathic physicians.

Grounds for disciplinary action against licensees, §54-5115.

Nursing home administrators.

Misdemeanors listed, §54-1611.

Optometrists.

Grounds for revocation of license, §54-1510.

Physical therapy practice.

Disciplinary action, §54-2219.

Physicians and surgeons.

Grounds for medical discipline, §54-1814.

Podiatrists.

Licenses.

Grounds for suspension or revocation, §54-608.

Public works contractors.

Misrepresentation of material facts. Grounds for disciplinary proceedings, §54-1914.

Shorthand reporters.

Grounds for suspension or revocation of certification, §54-3112.

Social workers.

Grounds for suspension or revocation of license, §54-3211.

Student athlete agents.

Prohibited conduct, §54-4814.

Veterinarians.

Grounds for revocation or suspension of license, §54-2113.

**FREEDOM OF CHOICE OF
DENTURES ACT.**

General provisions, §§54-3301 to 54-3323.

FUNDS.

Board of acupuncture, §54-4705.

Breed distribution account, §54-2513.

Dentists.

Board of dentistry fund.

Creation, §54-910.

Electrical board fund, §54-1015.

Heating, ventilation and air conditioning board fund, §54-5024.

Idaho horse owner/breeder award account, §54-2513.

Pari-mutuel distribution fund, §54-2513.

Physical therapy practice.

Occupational licenses fund, §54-2224.

Physicians and surgeons.

State board of medicine fund.

Creation, §54-1809.

Plumbing board fund, §54-2630.

Public works contractors.

License fund.

Creation, §54-1921.

Deposit of moneys, §54-1921.

Racing.

Breed distribution account, §54-2513.

Idaho horse owner/breeder award account, §54-2513.

Pari-mutuel distribution fund, §54-2513.

Public school income fund.

Payments, §54-2515.

Racing commission account, §54-2513.

Simulcast purse moneys fund, §54-2508.

Track distribution account, §54-2513.

Track purse enhancement account, §54-2513.

Real estate brokers and salespersons.

Special real estate fund, §54-2021.

Real estate recovery fund, §§54-2069 to 54-2078.

Special real estate fund, §54-2021.

State board of accountancy account, §54-217.

Track distribution account, §54-2513.

Track purse enhancement account, §54-2513.

FUNDS —Cont'd

Veterinarians.

Board of veterinary medicine account.

Creation, §54-2121.

FUNERAL DIRECTORS AND EMBALMERS.

Morticians, funeral directors and embalmers, §§54-1101 to 54-1144.

FUNERALS.

Funeral directors.

General provisions, §§54-1101 to 54-1144.

Prearranged funeral plans, §§54-1139 to 54-1143.

G

GAS.

Liquefied petroleum gas, §§54-5301 to 54-5317.

GENERIC DRUGS.

Epilepsy and seizure drugs.

Notification of drug product selection, §54-1770.

GEOLOGISTS.

Applicability of act.

Exceptions, §54-2822.

Attorney general.

Legal counsel for board, §54-2821.

Board of registration for professional geologists.

Appointment of members, §54-2803.

Citizenship of members, §54-2804.

Compensation for board members, §54-2805.

Created, §54-2803.

Duties and powers, §54-2808.

Legal counsel, §54-2821.

Meetings, §54-2807.

Oaths, §54-2803.

Officers.

Elections, §54-2807.

Powers and duties, §54-2808.

Qualifications of members, §54-2804.

Removal of members by governor, §54-2806.

Subpoenas.

Power to issue subpoenas, §54-2808.

Terms of members, §54-2803.

Vacancies, §54-2806.

Contracts.

State and political subdivision contracts, §54-2818.

GEOLOGISTS —Cont'd**Corporations.**

Practice of geology by staff members of corporations.

Exceptions to act, §54-2822.

Counterfeiting.

Certificates of registration, §54-2821.

Declaration of policy, §54-2801.**Definitions, §54-2802.****Deposit of fees collected, §54-2809.****Discipline, §54-2819.****Examinations.**

Qualifications for registration, §54-2812.

Reexamination, §54-2814.

Scope, §54-2814.

Time and place, §54-2814.

Waiver of examination requirement, §54-2812.

Exceptions to act, §54-2822.**Fees.**

Deposit of fees collected, §54-2809.

Reexamination fee, §54-2814.

Registration, §54-2813.

Renewal of certificate, §54-2816.

Felonies.

Grounds for denial or suspension of certificate, §54-2819.

Fines.

Violation of provisions, §54-2819.

Forgery and counterfeiting.

Certificates of registration, §54-2821.

Fraud.

Suspension or revocation of certificate, §54-2819.

Geology.

Defined, §54-2802.

Hearings.

Revocation or suspension of certificate, §54-2819.

Negligence.

Gross negligence.

Grounds for suspension or revocation of certificate, §54-2819.

Nonresidents.

Exceptions to act, §54-2822.

Oaths.

Board of registration for professional geologists, §54-2803.

Policy.

Legislative declaration, §54-2801.

Professional geologists.

Defined, §54-2802.

Registration.

Applications.

Fees, §54-2813.

Forms, §54-2813.

GEOLOGISTS —Cont'd**Registration —Cont'd**

Certificate of registration.

Contents, §54-2815.

Expiration, §54-2816.

Hearings.

Revocation or suspension of certificate, §54-2819.

Issuance, §54-2815.

Obtaining or using false or forged certificates, §54-2821.

Renewal, §54-2816.

Suspension or revocation, §54-2819.

Fees, §54-2813.

Qualifications for registration, §54-2812.

Salaries.

Board of registration.

Compensation for board members, §54-2805.

Seals and sealed instruments.

Invalid affixations unlawful, §54-2815.

Work requiring seal, §54-2815.

Signatures.

Signing work, §54-2815.

State of Idaho.

Contracts, §54-2818.

Subpoenas.

Board of registration.

Power to issue subpoenas, §54-2808.

Time.

Examinations, §54-2814.

Title of act, §54-2801.**United States.**

Practice of geology by officers and employees of United States.

Exceptions to act, §54-2822.

Violations, §54-2821.

Fines, §54-2819.

GIFTS.**Dentures.**

Freedom of choice of dentures act.

Making gifts to persons referring patients, §54-3320.

Prescription drugs.

Legend drug donation act, §§54-1760 to 54-1765.

GOOD SAMARITANS.**Persons rendering aid in emergency.**

Unlicensed practice, §54-1804.

GOVERNOR.**Board of accountancy.**

Appointment of members, §54-203.

GOVERNOR —Cont'd

Pharmacists and pharmacies.

- State board of pharmacy.
- Appointment of members,
§54-1709.
- Removal of members, §54-1712.

**GRAPE GROWERS AND WINE
PRODUCERS COMMISSION.**

Account.

- Acceptance of grants, donations and
gifts, §54-3607.
- Defined, §54-3603.
- Deposit of funds collected, §54-3607.

Advertising.

- Duty of commission, §54-3606.

Appointment of members, §54-3604.

Bonds, surety.

- Administrators, agents or employees
appointed by commission,
§54-3608.
- Costs of bond administrative
expense, §54-3608.

**Compensation of members,
§54-3602.**

Composition, §54-3602.

Construction and interpretation.

- Liberal construction of act, §54-3612.

Creation, §54-3602.

Declaration of policy, §54-3601.

Definitions, §54-3603.

Duties and powers, §54-3605.

Educational campaigns.

- Duty of commission, §54-3606.

Growers.

- Defined, §54-3603.

Idaho grape products.

- Defined, §54-3603.
- Promotion of, §54-3606A.

Legislative policy, §54-3601.

Liability.

- State of Idaho not liable for acts or
omissions of commission or
members, §54-3609.

Native vineyards.

- Defined, §54-3603.

Opt out alternative, §54-3611.

Powers and duties, §54-3605.

Producers.

- Defined, §54-3603.

**Promotion of Idaho grape
products, §54-3606A.**

**Qualifications of members,
§54-3602.**

Research.

- Commission to provide for and
conduct comprehensive and
extensive research, §54-3606.

**GRAPE GROWERS AND WINE
PRODUCERS COMMISSION**

—Cont'd

**Severability of provisions, §54-3612.
State of Idaho.**

- Liability of acts or omissions of
commission or members,
§54-3609.

Taxation, §54-3610.

- Late fees, §54-3610.

Terms of members, §54-3604.

Vacancies, §54-3604.

Wineries.

- Defined, §54-3603.

H

HAIR.

Barbers.

- General provisions, §§54-501 to
54-530.

HEALTH.

Acupuncture, §§54-4701 to 54-4713.

Animals.

- Veterinarians, §§54-2101 to 54-2121.

Dentists, §§54-901 to 54-936.

Natural health care services.

- Naturopathic physicians, §§54-5101
to 54-5118.

Nurses, §§54-1401 to 54-1418.

**Physicians and surgeons, §§54-1801
to 54-1841.**

**Respiratory care practice,
§§54-4301 to 54-4321.**

Veterinarians, §§54-2101 to 54-2121.

**HEALTH AND WELFARE
DEPARTMENT.**

Dead bodies.

- Authority of department to control
handling, §54-1119.

**HEALTH CARE PROVIDER
PROFILES.**

**Patient access to information,
§§54-4601 to 54-4604.**

- Crimes of moral turpitude, §54-4603.
- Definitions, §54-4602.
- Disciplinary actions, §54-4603.
- Disclosure requirements.
- Health care professionals,
§54-4603.
- Duties of boards and providers,
§54-4604.
- Legislative purpose, §54-4601.
- Malpractice judgments, §54-4603.
- Medicaid and Medicare program
participation, §54-4603.

HEALTH CARE PROVIDER PROFILES —Cont'd

Patient access to information —Cont'd

Specialty certification, §54-4603.

HEALTH CARE PROVIDERS.

Acupuncture, §§54-4701 to 54-4713.

Athletic trainers, §§54-3901 to 54-3917.

Chiropractors, §§54-701 to 54-715.

Counselors and therapists, §§54-3401 to 54-3415.

Dentists, §§54-901 to 54-936.

Dentures.

Freedom of choice of dentures act, §§54-3301 to 54-3323.

Dietitians, §§54-3501 to 54-3512.

Health professional peer entity assistance, §§54-4401 to 54-4407.

Massage therapists, §§54-4001 to 54-4015.

Naturopathic physicians, §§54-5101 to 54-5118.

Nurses, §§54-1401 to 54-1418.

Occupational therapists, §§54-3701 to 54-3722.

Optometrists, §§54-1501 to 54-1525.

Patient access to information about, §§54-4601 to 54-4604.

Pharmacists, §§54-1701 to 54-1759.

Physical therapy practice, §§54-2201 to 54-2224.

Podiatrists, §§54-601 to 54-615.

Psychologists, §§54-2301 to 54-2315.

Respiratory care practice, §§54-4301 to 54-4321.

Speech and hearing services practitioners, §§54-2901 to 54-2927.

HEALTH COVERAGE.

Boxing, sparring and wrestling.

Promoters required to obtain health insurance, §54-408.

Wrestling, boxing, and sparring.

Promoters required to obtain health insurance, §54-408.

HEALTH FACILITIES.

Nursing home administrators, §§54-1601 to 54-1616.

HEALTH PROFESSIONAL PEER ENTITY ASSISTANCE

§§54-4401 to 54-4407.

Administrative rules, §54-4405.

Agreements with entities, §54-4402.

Assessments, §54-4402.

Definitions, §54-4401.

HEALTH PROFESSIONAL PEER ENTITY ASSISTANCE —Cont'd

Discovery.

Records and proceedings not subject to, §54-4403.

Evidence.

Records and proceedings of entities not subject to discovery or subpoena, §54-4403.

Funding activities of entities, §54-4402.

Immunities.

Board members, employees or contractors of entities, §54-4404.

Privileged communications.

Records and proceedings of assistance entities, §54-4403.

Records, §54-4403.

Referral in addition to or in lieu of discipline, §54-4406.

Reports, §54-4407.

Referrals to entities, §54-4406.

Rules and regulations, §54-4402.

Administrative rules, §54-4405.

Subpoenas.

Records and proceedings not subject to, §54-4403.

HEARING AID DEALERS AND FITTERS.

Speech and hearing services practitioners.

Generally, §§54-2901 to 54-2927.

HEARING IMPAIRED PERSONS.

Speech and hearing services practitioners, §§54-2901 to 54-2927.

HEARINGS.

Barbers.

Licenses.

Refusal to issue, revocation or suspension, §54-517.

Boxing, sparring and wrestling.

Permits for events.

Refusal to grant or cancelation, §54-405.

Cosmeticians.

Refusal, revocation or suspension of certificate or license, §54-817.

Electrical contractors and journeymen.

Revocation or suspension of license, §54-1009.

Engineers.

Licenses.

Disciplinary action, §54-1220.

Geologists.

Revocation or suspension of certificate, §54-2819.

HEARINGS —Cont'd

Morticians, funeral directors and embalmers.

Denial, suspension or revocation of licenses.

Hearing by board of morticians, §54-1117.

Nurses.

Disciplinary actions, §54-1413.

Nursing home administrators.

Board of examiners.

Rules of evidence, §54-1604.

Physicians and surgeons.

Disabled physicians.

Proceedings against physician, §54-1837.

Podiatrists.

License suspension or revocation, §54-610.

Real estate appraisers.

Disciplinary proceedings, §54-4108.

Shorthand reporters.

Violations, §54-3113.

Social workers.

Revocation or suspension of license, §54-3212.

Surveys and surveyors.

Licenses.

Disciplinary action, §54-1220.

HEATING, VENTILATION AND AIR CONDITIONING

CONTRACTORS, §§54-5001 to 54-5024.

Administrator of division of building safety.

Exclusive jurisdiction, §54-5015.

Inspection of work authorized by permit, §§54-5018 to 54-5021.

Powers and duties, §54-5006.

Apprentice.

Competency, §54-5009.

Registration, §54-5012.

Certificate carried on job, §54-5014.

Attorney general.

Representation of division of building safety, §54-5023.

Board, §§54-5004, 54-5005.

Bond, §54-5007.

Certificate of competency.

Card, in form of, §54-5011.

Carried on job.

Required for journeyman, §54-5014.

Classification of competency, §54-5009.

Display for public view, §54-5014.

Exceptions to requirement, §54-5002.

HEATING, VENTILATION AND AIR CONDITIONING

CONTRACTORS —Cont'd

Certificate of competency —Cont'd

Expiration, §54-5013.

Fees, §54-5012.

Issuance, §54-5011.

Prerequisite to do business, §54-5008.

Renewal, §54-5013.

Requirements, §§54-5007, 54-5015.

Revival of expire certificate, §54-5013.

Revocation or suspension, §54-5013A.

Transfer prohibited, §54-5008.

Classification of competency, §54-5009.

Continuing education.

Board to establish requirements by rule, §54-5010.

Contractor.

Competency, §54-5009.

Criminal violations, penalty, §54-5022.

Declaration of policy, §54-5001.

Definitions, §54-5003.

Education requirement.

Board to establish by rule, §54-5010.

Examination, §54-5010.

Fees, §54-5012.

Exceptions, §54-5002.

Exclusive jurisdiction of state, §54-5015.

Fees.

Apprentices, §54-5012.

Permits authorizing work.

Application fee, §54-5017.

Fines, criminal violations, §54-5022.

Fund created, §54-5024.

Inspection of work performed under permit, §54-5018.

Appointment of inspectors, §54-5021.

Approval, §54-5019.

Certification, final inspection, §54-5019.

Failure to comply, notice, §54-5019.

Financial interest in business inspecting, prohibition, §54-5021.

Qualifications to be inspector, §54-5021.

Reinspection, fee, §54-5020.

Request for inspection.

Duty of permit holder, §54-5020.

Journeyman.

Certificate carried on job, §54-5014.

Competency, §54-5009.

HEATING, VENTILATION AND AIR CONDITIONING CONTRACTORS —Cont'd

Local jurisdiction.

Additional licenses and fees,
requiring.

No jurisdiction, preempted by
state, §54-5015.

Inspection of work performed under
permit.

Establishment of time permit
holder to request, §54-5020.

Mechanical inspectors, certification
required, §54-5021.

Permits and inspections.

Work regulated and enforced by
code or ordinance, §54-5016.

Permits authorizing work.

Application fee, §54-5017.

Required, §54-5016.

Prosecuting attorneys.

Representation of division of building
safety, §54-5023.

Specialty contractor.

Competency, §54-5009.

Subpoenas.

Administrator of division of building
safety, power to issue, §54-5006.

Violations, §54-5022.

HORSE RACING.

General provisions, §§54-2501 to
54-2517.

HORSES.

Racing.

General provisions, §§54-2501 to
54-2517.

HOSPITALS.

Pharmacists and pharmacies.

Sale of legend drugs.

Exceptions to provisions, §54-1734.

**HVAC CONTRACTORS, §§54-5001 to
54-5024.**

I

**IDAHO ACCOUNTANCY ACT,
§§54-201 to 54-228.**

**IDAHO BARBER LAW, §§54-501 to
54-530.**

**IDAHO CERTIFIED SHORTHAND
REPORTERS ACT, §§54-3101 to
54-3118.**

**IDAHO CONTRACTOR
REGISTRATION ACT, §§54-5201
to 54-5219.**

**IDAHO COSMETOLOGY LAW,
§§54-801 to 54-837.**

**IDAHO DRIVING BUSINESSES
ACT, §§54-5401 to 54-5409.**

**IDAHO FREEDOM OF CHOICE OF
DENTURES ACT, §§54-3301 to
54-3323.**

**IDAHO LIQUEFIED PETROLEUM
GAS PUBLIC SAFETY ACT,
§§54-5301 to 54-5317.**

**IDAHO PHARMACY ACT, §§54-1701
to 54-1739.**

**IDAHO RACING ACT, §§54-2501 to
54-2517.**

**IDAHO REAL ESTATE
APPRAISERS ACT, §§54-4101 to
54-4119.**

**IDAHO REAL ESTATE
BROKERAGE
REPRESENTATION ACT,
§§54-2082 to 54-2097.**

**IDAHO REAL ESTATE LICENSE
LAW, §§54-2001 to 54-2080.**

**IDAHO RESIDENTIAL CARE
FACILITY ADMINISTRATORS
ACT, §§54-4201 to 54-4216.**

**IDAHO VETERINARY PRACTICE
ACT, §§54-2101 to 54-2121.**

**IDAHO WHOLESALE DRUG
DISTRIBUTION ACT, §§54-1751
to 54-1759.**

IMMUNITIES.

Chiropractors.

Peer review committee, §54-715.

Dentists.

Peer review committees.

Immunity from liability, §54-934.

Volunteer's license, §54-935.

Health professional peer entity assistance.

Board members, employees or
contractors of entities, §54-4404.

**Lawyer assistance program,
§54-4902.**

Midwives.

Vicarious liability.

Physicians, hospitals, etc.,
§54-5512.

Morticians, funeral directors and embalmers.

Prearranged funeral plans.

Disposition of remains pursuant to
authorization, §54-1143.

IMMUNITIES —Cont'd**Prescription drugs.**

- Legend drug donation act.
- Qualifying charitable center or clinic, §54-1764.

IMMUNIZATION.**Flu shots.**

- Authority pharmacists to prescribe, §54-1704.

IMPAIRED HEALTH CARE PROFESSIONALS.**Peer assistance entity agreements,** §§54-4401 to 54-4407.**INCOME TAX.****Public works contractors.**

- Filing of notices and tax returns, §54-1904A.
- Payment, §54-1904A.

INDIGENT PERSONS.**Legend drug donation act,** §§54-1760 to 54-1765.

- Acceptance and distribution of legend drugs, §54-1762.

Board of pharmacy.

- Establishment of donation program, §54-1762.

- Powers and duties, §54-1763.

Definitions, §54-1761.**Qualifying charitable center or clinic.**

- Acceptance and distribution of legend drugs, §54-1762.

Defined, §54-1761.

- Immunity from liability, §54-1764.

Short title, §54-1760.**Wholesale distribution act.**

- Exemption if persons or entities, §54-1765.

Medically indigent persons.

- Legend drug donation act, §§54-1760 to 54-1765.

Prescription drugs.

- Legend drug donation act, §§54-1760 to 54-1765.

INDORSEMENTS.**Architects.**

- License by indorsement, §54-302A.

Chiropractors.

- Licensure by indorsement, §54-710.

Physicians and surgeons.

- Licensure by indorsement, §54-1811.

INJUNCTIONS.**Accountants,** §54-223.**Acupuncture.**

- Violations of provisions, §54-4713.

Architects.

- Board of architectural examiners.
- Procedure for injunctions, §54-315.

INJUNCTIONS —Cont'd**Boxing, sparring and wrestling.**

- Conducting events without license, §54-420.

Construction management licensing.

- Unlicensed managers, §54-4514.

Counselors and therapists, §54-3409.**Dentists.**

- Actions to enjoin violations, §54-933.

Dental hygienists.

- Unlawful practice.

- Conviction not to prevent issuance of injunction, §54-906.

Unlawful practice.

- Conviction to prevent issuance of injunction, §54-905.

Driving businesses.

- Unlawful operation, §54-5409.

Massage therapists.

- Injunction of violations, §54-4014.

Morticians, funeral directors and embalmers.

- Violations, §54-1127.

Naturopathic physicians.

- Unlicensed practice, §54-5117.

Nurses.

- Violations of act.

- Authority of board to maintain action, §54-1416.

Optometrists.

- Procedure for obtaining injunction, §54-1524.

- Violations of law or rules and regulations, §54-1512.

Physical therapy practice.

- Disciplinary action, §54-2220.

Physicians and surgeons.

- Violations, §54-1815.

Public works contractors, §54-1920.**Real estate appraisers.**

- Violations of provisions, §54-4117.

Real estate brokers and salespersons.

- Violations of provisions, §54-2066.

Respiratory care practice.

- Violations of chapter, §54-4319.

Speech and hearing services practitioners.

- Disciplinary action against licensees, §54-2924.

Veterinarians.

- Practice without license or temporary permit, §54-2118.

- Violations of chapter, §54-2118.

INJUNCTIONS PENDENTE LITE.**Accountants**, §54-223.**INSPECTIONS.****Barbers**, §54-524.**Electrical contractors and journeymen.**

Inspectors.

Qualifications, §54-1019.

Electrical power.

Municipal corporations.

Inspection provisions inapplicable when installation covered by ordinance, §54-1001B.

When inspections within municipalities authorized, §54-1001C.

Electric power.

Modular buildings, §54-1001D.

Heating, ventilation and air conditioning installation, §§54-5018 to 54-5021.**Pharmacists and pharmacies.**

Out-of-state mail service pharmacies, §54-1745.

Plumbing and plumbers.

Agents, §54-2624.

Application for permit.

Fee, §54-2623.

Appointment of inspectors, §54-2627.

Approval and certification of inspection, §54-2625.

Certification of inspection, §54-2625.

Fees, §54-2623.

Modular buildings, §54-2622A.

Municipal fees for inspections, §54-2619.

Exceptions, §54-2619.

Notification for inspection, §54-2626.

Qualifications of inspectors, §54-2627.

Reinspection fee, §54-2626.

Test for inspection by agent, §54-2624.

Unlawful practices, §54-2627.

INSURANCE.**Boxing, sparring and wrestling.**

Promoters required to obtain health insurance, §54-408.

Construction contractors.

Application for registration.

Proof of liability insurance, §54-5210.

INSURANCE —Cont'd**Dentures.**

Freedom of choice of dentures act.

Dental health insurance policies to include denturist's services, §54-3318.

Liability insurance.

Racing.

Public insurance, §54-2511.

Racing.

Public liability insurance, §54-2511.

Real estate brokers and salespersons.

Errors and omissions insurance, §54-2013.

INTELLECTUAL DISABILITY, PERSONS WITH.**Health professional peer entity assistance**, §§54-4401 to 54-4407.**INTEREST.****Real estate brokers and salespersons.**

Real estate recovery fund.

Payment if recovery fund balance insufficient, §54-2075.

INTERSTATE COMPACTS.**Nurses.**

Licenses, §54-1418.

INVESTIGATIONS.**Construction contractors.**

Investigation of registrants, §54-5215.

Naturopathic physicians.

Disciplinary action against licensees, §54-5114.

Optometrists.

Unlicensed practice, §54-1502A.

Physical therapy practice.

Disciplinary action, §54-2220.

Public works contractors.

Licensing board.

Authority to investigate license applicant, §54-1910.

Real estate appraisers.

Board.

Disciplinary proceedings, §54-4107.
Powers, §54-4106.**Real estate brokers and salespersons.**

Powers of commission, §54-2058.

Shorthand reporters.

Violations, §54-3113.

INVESTIGATIONS —Cont'd
Speech and hearing services
practitioners.

Disciplinary action against licensees,
 §54-2924.

J

JOURNEYMEN.

Electrical contractors and
journeymen, §54-1001 to
54-1019.

JUDO.

Boxing, sparring and wrestling
generally, §54-401 to 54-422.

K

KARATE.

Boxing, sparring and wrestling
generally, §54-401 to 54-422.

KICKBOXING.

Boxing, sparring and wrestling
generally, §54-401 to 54-422.

L

LABOR AND EMPLOYMENT
RELATIONS.

Department of labor.

Electrical contractors and
 journeymen.
 Director of department.
 Disconnecting electrical service,
 §54-1004.
 Inspections of electrical
 installations, §54-1004.
 Rules and regulations, §54-1005.

LANDSCAPE ARCHITECTS.

Appeals.

Orders of board suspending or
 revoking registration, §54-3004.

Board of landscape architects.

Composition, §54-3003.
 Created, §54-3003.
 Terms of office, §54-3003.
 Vacancies, §54-3003.

Citation of act, §54-3001.

Contempt.

Disobedience to subpoena issued by
 board, §54-3003.

County attorneys.

Prosecution of violations, §54-3005.

Definitions, §54-3002.

Discipline.

Powers of board, §54-3003.

LANDSCAPE ARCHITECTS

—Cont'd

Discipline —Cont'd

Proceedings generally, §54-3004.

Examinations.

Annual examinations, §54-3003.

LARCENY.

Scrap dealers.

Nonferrous or stainless steel metal
 property.
 Preserving evidence of metal theft,
 §54-2706.

LASER SURGERY.

Naturopathic physicians.

Prohibited from performing,
 §54-5105.

LAW ENFORCEMENT OFFICERS.

Scrap dealers.

Nonferrous or stainless steel metal
 property.
 Reporting to law enforcement,
 §54-2705.

LAWYER ASSISTANCE PROGRAM,

§§54-4901, 54-4902.

LEGEND DRUG DONATION ACT,

§§54-1760 to 54-1765.

LIABILITY.

Dentists.

Peer review committees.
 Immunity from liability, §54-934.

Grape growers and wine producers
commission.

State of Idaho not liable for acts or
 omissions of commission or
 members, §54-3609.

Physicians and surgeons.

Disabled physicians.
 No liability for damages, §54-1840.

Public works contractors.

Public contracts bond act.
 Liability of public body for failure
 to obtain bond, §54-1928.

LIABILITY INSURANCE.

Racing.

Public insurance, §54-2511.

LICENSED PUBLIC
ACCOUNTANTS.

Generally, §54-201 to 54-228.

LICENSES AND PERMITS.

Cemeteries.

Board of cemeterians, §54-3803.

Construction contractors, §§54-5201
to 54-5219.

LICENSES AND PERMITS —Cont'd**Dead bodies.**

Transportation outside state,
§54-1120.

Engineers.

General requirements, §54-1212.

Jurisdiction of state, §54-1236.

Heating, ventilation and air conditioning contractors.

Authorizing work.

Application fee, §54-5017.

Required, §54-5016.

Land surveyors.

General requirements for licenses,
§54-1212.

Massage therapists.

Disciplinary action against licensee,
§54-4013.

Endorsement, license without
examination, §54-4010.

Existing practitioners, §54-4012.

Fees, §54-4008.

Qualifications, §54-4009.

Renewal, §54-4011.

Required, §54-4005.

Midwives, §54-5506.

Fees, §54-5509.

Qualifications, §54-5507.

Renewal, §54-5511.

Naturopathic physicians, §§54-5101 to 54-5118.**Polysomnography related respiratory care, §54-4304A.****Public works contractors.**

Construction management licensing,
§§54-4501 to 54-4514.

Respiratory care practice.

Polysomnography related respiratory
care, §54-4304A.

Speech and hearing services practitioners, §§54-2901 to 54-2927.**Subpoenas.**

Issuance in license suspension or
revocation proceedings, §54-610.

Surveyors.

General requirements for licenses,
§54-1212.

Jurisdiction of state, §54-1236.

Water supply and waterworks.

Drinking water and wastewater
professionals licenses, §§54-2401
to 54-2414.

LIENS.**Construction contractors.**

Unregistered contractors.

Denial of lien rights, §54-5208.

LIMITED LIABILITY COMPANIES.**Real estate brokers and salespersons.**

Licenses.

Primary licenses for legal business
entities.

Additional requirements,
§54-2016.

Surveys and surveyors.

Practice by business entity, §54-1235.

LIMITED LIABILITY PARTNERSHIPS.**Real estate brokers and salespersons.**

Licenses.

Primary licenses for legal business
entities.

Additional requirements,
§54-2016.

Surveys and surveyors.

Practice by business entity, §54-1235.

LIQUEFIED PETROLEUM GAS,

§§54-5301 to 54-5317.

Citation of act, §54-5301.**Dealer's license.**

Classification, §54-5312.

Qualifications, §54-5307.

Definitions, §54-5303.**Facility licenses.**

Classification of license, §54-5312.

Criteria for issuance, §54-5308.

Idaho liquefied petroleum gas safety board.

Composition, §54-5309.

Enforcement of act, §54-5310.

Establishment, §54-5309.

Powers and duties, §54-5310.

Quorum, §54-5309.

Rulemaking authority, §54-5310.

Licensure.

Change of name or address
notification, §54-5317.

Classification of licenses, §54-5312.

Criteria for license issuance,
§54-5307.

Dealer's license.

Qualifications, §54-5307.

Denial of license, §54-5306.

Deposit of fees, §54-5313.

Disciplinary action against licensees,
§§54-5315 to 54-5317.

Duties of prosecuting attorney,
§54-5317.

Procedure for disciplinary
proceedings, §54-5315.

Violations and penalties, §54-5316.

Effective date, §54-5313.

LIQUEFIED PETROLEUM GAS

—Cont'd

Licensure —Cont'd

Exempt natural gas dealers,
§54-5305.

Facility licenses.

Criteria for issuance, §54-5308.

Issuance of license, §§54-5306,
54-5311, 54-5313.

License fees, §§54-5308, 54-5313,
54-5314.

License required, §54-5304.

Register of licensees, §54-5313.

Renewal, §54-5313.

Transferability of licenses, §54-5314.

Unlicensed persons, §§54-5304,
54-5316.

Petroleum distillates.

Exemption from act, §54-5305.

Portable container dispensers.

Exemption from act, §54-5305.

Public policy, §54-5302.**Title of act, §54-5301.****Unlicensed persons, §§54-5304,
54-5316.****LOCAL GOVERNMENT.****Heating, ventilation and air
conditioning contractors,
journeymen and apprentices.**

Inspection of work performed under
permit.

Establishment of time permit
holder to request, §54-5020.

Mechanical inspectors, certification
required, §54-5021.

Permits and inspections.

Work regulated and enforced by
code or ordinance, §54-5016.

Requiring additional licenses or fees.
No jurisdiction, §54-5015.

**LOST AND UNCLAIMED
PROPERTY.****Dentists.**

Lost or destroyed certificates of
license, §54-932.

M**MAGISTRATES.****Shorthand reporters.**

Magistrate's division of district
courts.

Exceptions to certification
requirement, §54-3104.

MAIL.**Pharmacies.**

Mail service pharmacies located
out-of-state, §§54-1740 to
54-1748.

MAIL ORDER PHARMACIES.**Mail service pharmacies located
out-of-state.**

Generally, §§54-1740 to 54-1748.

MALPRACTICE.**Veterinarians.**

Grounds for revocation or suspension
of license, §54-2113.

MANUFACTURED HOMES.**Electrical contractors and
journeymen.**

Exceptions to act, §54-1016.

Modular building inspections,
§54-1001D.

Plumbing and plumbers.

Inspections of modular buildings,
§54-2622A.

**Real estate brokers and
salespersons.**

Sale by active licensee.

Compliance with chapter required,
§54-2003.

MARKETING.**Prepaid funeral or cemetery
merchandise or services,
§54-1136.****MARRIAGE.****Therapists.**

Counselors and therapists generally,
§§54-3400 to 54-3415.

MARTIAL ARTS.**Boxing, sparring and wrestling
generally, §§54-401 to 54-422.****MASSAGE THERAPISTS, §§54-4001
to 54-4015.****Advertising.**

Restrictions, §54-4005.

Board of massage therapy.

Established, §54-4006.

Members, §54-4006.

Powers and duties, §54-4007.

Chiropractic practice, §54-704.**Criminal penalties for violations of
act, §54-4014.****Definitions, §54-4002.****Disciplinary action against
licensee, §54-4013.**

MASSAGE THERAPISTS —Cont'd

Exemptions from provisions,
§54-4003.

Existing practitioners, licenses,
§54-4012.

Fees, §54-4008.

Injunction of violations, §54-4014.
Licenses.

Disciplinary action against licensee,
§54-4013.

Endorsement, license without
examination, §54-4010.

Existing practitioners, §54-4012.

Fees, §54-4008.

Qualifications, §54-4009.

Renewal, §54-4011.

Required, §54-4005.

Preemption of local laws, §54-4015.

Prohibited acts, §54-4004.

Disciplinary action against licensee,
§54-4013.

Penalties for violations, §54-4014.

Purpose of provisions, §54-4001.

MECHANICS' AND**MATERIALMEN'S LIENS.**

Construction contractors.

Unregistered contractors.

Denial of lien rights, §54-5208.

MEDICAID.

Health care provider profiles.

Patient access to information.

Medicaid and Medicare program
participation, §54-4603.

MEDICAL MALPRACTICE.

Health care providers.

Database of provider profiles,
§§54-4601 to 54-4604.

MEDICAL PRACTICE ACT,

§§54-1801 to 54-1820.

MEDICAL RECORDS.

Pharmacists and pharmacies.

Failure to safeguard confidentiality.

Grounds for medical discipline,
§54-1814.

MEDICAL SCHOOLS.

Acceptable school of medicine.

Defined, §54-1803.

Foreign medical schools.

Graduates of schools located outside
of United States and Canada,
§54-1812.

MEDICATION ASSISTANTS,

CERTIFIED, §54-1406A.

MEDICINE.

Pharmacists and pharmacies,

§§54-1701 to 54-1759.

MEDICINE —Cont'd

Physicians and surgeons generally,
§§54-1801 to 54-1841.

MENTALLY ILL.

Health professional peer entity
assistance, §§54-4401 to 54-4407.

Naturopathic physicians.

Legal finding of mental
incompetence.

Grounds for disciplinary action
against licensees, §54-5115.

Psychologists, §§54-2301 to 54-2315.

Veterinarians.

Grounds for revocation or suspension
of license, §54-2113.

MIDWIVES, §§54-5501 to 54-5513.

Applicability of provisions,
§54-5508.

Board of midwifery.

Creation, §54-5503.

Duties, §54-5504.

Members, §54-5503.

Powers, §54-5504.

Rulemaking, §54-5505.

Client protection, §54-5510.

Consent.

Informed consent, §54-5511.

Crimes and offenses.

Unauthorized use of title or
designation, §54-5506.

Unlicensed practice, §54-5506.

Definitions, §54-5502.

Fees, §54-5509.

Immunity.

Vicarious liability.

Physicians, hospitals, etc.,
§54-5512.

Informed consent, §54-5511.

Intent of legislature, §54-5501.

Legislative purpose, §54-5501.

Licenses, §54-5506.

Fees, §54-5509.

Qualifications, §54-5507.

Renewal, §54-5511.

Notice to clients with certain
disorders, conditions, etc.,
§54-5511.

Records, §54-5511.

Renewal of license, §54-5511.

Rulemaking, §54-5505.

Severability, §54-5513.

Unlicensed practice, §54-5506.

Unprofessional conduct, §54-5510.

Vicarious liability.

Immunity of physicians, hospitals,
etc., §54-5512.

MINES AND MINING.**Engineers.**

Mining claim location.

Exemptions from act, §54-1223.

MISDEMEANORS.**Abstracters of title.**

Failure to file bond, §54-101.

Accountants, §54-222.

Acupuncture, §54-4713.

Architects, §54-310.

Athletic trainers, §54-3916.

Barbers.

Prohibited acts, §54-519.

Chiropractors.

Practice without a license, §54-705.

Construction management licensing, §54-4513.

Cosmeticians, §54-819.

Counselors and therapists.

Prohibited acts, §54-3408.

Dentists.

Licenses.

Revocation for conviction of crime, §54-923.

Unlawful practice of dental hygiene, §54-906.

Unlawful practice of dentistry, §54-905.

Dentures.

Freedom of choice of dentures act, §54-3319.

Dietitians, §54-3511.

Driving businesses.

Prohibited acts, §54-5409.

Electrical contractors, §54-1017.

Engineers, §54-1222.

Heating, ventilation and air conditioning contractors, journeymen and apprentices, §54-5022.

Licenses.

Dentists.

Revocation for conviction of crime, §54-923.

Liquefied petroleum gas.

Unlicensed dealers, §54-5316.

Massage therapists.

Criminal penalties for violations of act, §54-4014.

Morticians, funeral directors and embalmers, §54-1128.

Prepaid funeral or cemetery merchandise or services, §54-1138.

Nurses, §54-1414.

Nursing home administrators.

List of misdemeanors, §54-1611.

MISDEMEANORS —Cont'd

Occupational therapists, §54-3720.

Optometrists.

Practicing without license or on expired, revoked or suspended license, §54-1502.

Pharmacists and pharmacies.

Legend drugs.

Dispensing or delivering, §54-1732.

Mail service pharmacies located out-of-state, §54-1748.

Unlawful practice of pharmacy, §54-1721.

Wholesale drug distribution, §54-1759.

Physical therapy practice, §54-2223.

Plumbing and plumbers, §54-2628.

Podiatrists.

Licenses.

Practice without license, §54-614.

Psychologists.

Unlicensed practice, §54-2310.

Public works contractors, §54-1920.

Racing, §54-2509.

Real estate brokers and salespersons.

Acting without license, §54-2065.

Residential care facility administrators, §54-4212.

Respiratory care practice, §54-4320.

Scrap dealers.

Nonferrous or stainless steel metal property.

Unlawful violations, §54-2707.

Shorthand reporters, §54-3118.

Grounds for suspension or revocation of certification, §54-3112.

Social workers, §54-3217.

Speech and hearing services practitioners.

Unlawful practice, §54-2927.

Student athlete agents, §54-4815.

Veterinarians.

Practicing veterinary medicine without license or temporary permit, §54-2118.

Unauthorized practice, §§54-2114, 54-2118.

Water supply and waterworks.

Drinking water and wastewater professionals licenses, §54-2413.

MISREPRESENTATION.**Naturopathic physicians.**

Titles, abbreviations or insignia, §54-5103.

Speech and hearing services practitioners.

Title, abbreviation or insignia, §54-2904.

MIXED MARTIAL ARTS.

Boxing, sparring and wrestling,
§§54-401 to 54-422.

MOBILE HOMES.

Real estate brokers and salespersons.

Sale by active licensee.
Compliance with chapter required,
§54-2003.

MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS, §§54-1101 to 54-1144.

Accounts and accounting.

Accounting procedure, §54-1121.

Advance funeral agreements.

Prepaid funeral or cemetery merchandise or services,
§§54-1129 to 54-1138.

Advertisements.

False or misleading advertising.
Grounds for denial, suspension or revocation of licenses,
§54-1116.

Prepaid funeral or cemetery merchandise or services,
§54-1136.

Anatomical gifts.

Interference with right to make anatomical gift, §54-1118.

Appeals.

Judicial review of denial, suspension or revocation of license, §54-1117.

Board of cemeterians, §§54-3801 to 54-3805.

Board of morticians.

Appointment of members by governor, §54-1105.
Compensation, §54-1105.
Composition, §54-1105.
Conflicts of interest, §54-1105.
Duties and powers, §54-1106.
Established, §54-1105.
Hearings.
Denial, suspension or revocation of licenses, §54-1117.
Injunctions against violations of act, §54-1127.
Licenses.
Examination of applicants, §54-1108.
Meetings, §54-1105.
Officers, §54-1105.
Powers and duties, §54-1106.
Probation.
Authority to put license holder on probation, §54-1116.

MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS —Cont'd

Board of morticians —Cont'd

Qualifications of members, §54-1105.
Terms of office, §54-1105.
Vacancies on board, §54-1105.

Bureau chiefs.

Duties and powers, §54-1107.
Powers and duties, §54-1107.

Casket manufacturers.

Wholesalers and jobbers exempt from provisions of act, §54-1104.

Cemeteries.

Sale of vaults or burial receptacles to public.
Cemeteries exempt from provisions of act, §54-1104.

Churches.

Exemptions from provisions of act, §54-1104.

Cremation.

Person initiating process.
Supervision of licensed mortician, §54-1104.

Criminal offenses.

Prepaid funeral or cemetery merchandise or services.
Violations of provisions, §54-1138.

Dead bodies.

Department of health and welfare.
Authority to control handling of dead bodies, §54-1119.
Receiving body for transportation outside state without permit, §54-1120.
Sending body to funeral establishment without consent of next of kin.
Prohibited, §54-1118.

Definitions, §54-1102.

Prearranged funeral plans, §54-1139.
Prepaid funeral or cemetery merchandise or services, §54-1131.

Department of health and welfare.

Authority to control handling of dead bodies, §54-1119.

Disposition of dead bodies.

Prearranged funeral plans.
Authority in absence of or not covered by prearranged funeral plan, §54-1142.
Instructions for disposition, §54-1139.
Exceptions, §54-1140.
Right to rely on authorization, §54-1143.

**MORTICIANS, FUNERAL
DIRECTORS AND
EMBALMERS —Cont'd**

Disposition of dead bodies —Cont'd
Public interest and concern,
§54-1101.

Survivor's services, §54-1141.

District courts.

Injunctions against violations of act,
§54-1127.

Examinations.

Certification of results, §54-1108.

Grading by board, §54-1108.

Persons holding current valid license
in other states or territories.

Granting license without
examination, §54-1109.

Powers of board of morticians,
§54-1108.

Subjects, §54-1108.

Executors and administrators.

Disposition of bodies, §54-1118.

Exemptions from provisions of act,
§54-1104.

Fees.

Licenses, §54-1115.

Reinstatement, §54-1115A.

Felonies.

Grounds for denial, suspension or
revocation of licenses, §54-1116.

Fiduciaries.

Disposition of bodies.

Authority of fiduciaries, §54-1118.

Fraud.

Grounds for denial, suspension or
revocation of licenses, §54-1116.

Funeral services.

Prearranged funeral plans, §§54-1139
to 54-1143.

Prepaid funeral or cemetery
merchandise or services,
§§54-1129 to 54-1138.

Funeral supplies.

Manufacturers, wholesalers and
jobbers exempt from provisions
of act, §54-1104.

Hearings.

Denial, suspension or revocation of
licenses.

Hearing by board of morticians,
§54-1117.

Income and expenses, §54-1121.

Injunctions.

Violations, §54-1127.

**Judicial review of denial,
suspension or revocation of
license, §54-1117.**

**MORTICIANS, FUNERAL
DIRECTORS AND
EMBALMERS —Cont'd**

Legislative declaration.

Disposition of human bodies,
§54-1101.

Licenses.

Applications.

Contents, §54-1113.

Fees, §54-1115.

Filing with board, §54-1113.

Form, §54-1113.

Denial, suspension or revocation.

Grounds, §54-1116.

Examination of applicants, §54-1108.

Expiration, §54-1115A.

Fees, §54-1115.

Reinstatement, §54-1115A.

Funeral directors.

Requirements, §54-1109.

Funeral establishment licenses.

Cancellation, §54-1111.

Failure of establishment to have
resident full-time licensed
mortician in employ.

Cancellation of license, §54-1111.

Operation by legal representative
of the estate, §54-1111.

Requirements, §54-1111.

Indorsement, §54-1109.

Mortician's license.

Requirements, §§54-1109, 54-1111.

Persons required to have license,
§54-1103.

Qualifications of applicants,
§54-1109.

Certified copies of documents
showing qualifications,
§54-1113.

Reinstatement, §54-1115A.

Renewal, §54-1115A.

Resident trainee licenses.

Requirements, §§54-1103, 54-1112.

Suspension or revocation.

Grounds, §54-1116.

Written complaint, procedure,
§54-1117.

Marketing.

Prepaid funeral or cemetery
merchandise or services,
§54-1136.

Misdemeanors.

Prepaid funeral or cemetery
merchandise or services,
§54-1138.

Violations constituting
misdemeanors, §54-1128.

MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS —Cont'd

Notice.

Hearing on denial, suspension or revocation of license, §54-1117.

Penalties.

Prepaid funeral or cemetery merchandise or services.

Violations of statutory provisions, §54-1138.

Permits.

Transportation of body outside state.

Receiving body without permit prohibited, §54-1120.

Physicians and surgeons.

Sending body to funeral establishment without consent of next of kin, §54-1118.

Prearranged funeral plans,

§§54-1139 to 54-1143.

Arrangements by survivors.

Authority in absence of or not covered by plan, §54-1142.

Provisions not to prevent, §54-1141.

Authority in absence of or not covered by plan, §54-1142.

Compliance with person's direction as to disposition of remains, §54-1140.

Defined, §54-1139.

Immunity for disposal pursuant to authorization, §54-1143.

Instructions for disposition of

person's remains, §54-1139.

Requirement that directions be followed, §54-1140.

Reliance on fact set forth.

Right to rely, §54-1143.

Survivors of decedent.

Arrangements not prevented by provisions, §54-1141.

Authority in absence of or not covered by plan, §54-1142.

Prepaid funeral or cemetery merchandise or services,

§§54-1129 to 54-1138.

Advertising, §54-1136.

Beneficiaries.

Defined, §54-1131.

Certificate of authority.

Display, §54-1132.

Requirements, §54-1132.

Certified persons or sellers.

Defined, §54-1131.

Contracts.

Cancellation, §54-1135.

MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS —Cont'd

Prepaid funeral or cemetery merchandise or services —Cont'd

Contracts —Cont'd

Definitions, §54-1131.

Disclosure upon sale of business, §54-1138.

Form and content, §54-1133.

Price disclosure, §54-1133.

Definitions, §54-1131.

Enforcement of statutory provisions, §54-1138.

Exceptions, §54-1130.

Funeral or cemetery merchandise.

Defined, §54-1131.

Substitutions, §54-1137.

Funeral or cemetery services.

Defined, §54-1131.

Substitutions, §54-1137.

Guaranteed contracts.

Defined, §54-1131.

Legislative intent, §54-1129.

Marketing, §54-1136.

Nonguaranteed contracts.

Defined, §54-1131.

Penalties.

Violations of provisions, §54-1138.

Prearrangement trust fund deposits, §54-1134.

Prepaid prearrangement sales or prearrangement sales contracts.

Defined, §54-1131.

Price.

Disclosure in contract, §54-1133.

Primary containers.

Defined, §54-1131.

Public cemeteries.

Defined, §54-1131.

Purchasers.

Defined, §54-1131.

Scope of statutory provisions, §54-1130.

Secondary containers.

Defined, §54-1131.

Solicitations, §54-1136.

Limitations, §54-1136.

Trustees.

Defined, §54-1131.

Trust fund deposits.

Prearrangement, §54-1134.

Refunds, §54-1135.

Probation.

Power of board to put license holder on probation, §54-1116.

MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS —Cont'd

Public officers and employees.

Sending body to funeral establishment without consent of next of kin, §54-1118.

Qualifications, §54-1109.

Certified copies of documents showing qualifications, §54-1113.

Resident trainees.

Licenses.

Required, §§54-1103, 54-1112.

Rules and regulations.

Handling of dead bodies, §54-1119.

Sales.

Prepaid funeral or cemetery merchandise or services generally, §§54-1129 to 54-1138.

Sending body to establishment without inquiry, §54-1118.

Service of process.

Notice of hearing on denial, suspension or revocation of license, §54-1117.

Solicitation.

Prepaid funeral or cemetery merchandise or services, §54-1136.

States.

Persons holding current license in other state or territory.

License granted without examination, §54-1109.

Transportation of dead bodies outside state.

Mortician's certificate required, §54-1120.

Unprofessional conduct.

Grounds for denial, suspension or revocation of license, §54-1116.

Venue.

Actions for injunctions against violations of act, §54-1127.

Violations.

Grounds for denial, suspension or revocation of licenses, §54-1116.

Injunctions, §54-1127.

Misdemeanors, §54-1128.

MOTOR VEHICLES.

Dealers, manufacturers and distributors.

Nonferrous or stainless steel metal property.

Exemption transaction from act, §54-2708.

Driving businesses, §§54-5401 to 54-5409.

MOTOR VEHICLES —Cont'd

Education.

Driving businesses, §§54-5401 to 54-5409.

MUNICIPAL CORPORATIONS.

Electrical contractors and journeymen.

Inspections.

Provisions inapplicable when installation covered by municipal ordinance, §54-1001B.

When inspections within municipalities authorized, §54-1001C.

Electrical power.

Inspections.

Provisions inapplicable when installation covered by municipal ordinance, §54-1001B.

When authorized, §54-1001C.

Heating, ventilation and air conditioning contractors, journeymen and apprentices.

Inspection of work performed under permit.

Establishment of time permit holder to request, §54-5020.

Mechanical inspectors, certification required, §54-5021.

Permits and inspections.

Work regulated and enforced by code or ordinance, §54-5016.

Requiring additional licenses or fees.

No jurisdiction, §54-5015.

Plumbing and plumbers.

Cities electing to implement plumbing code enforcement program.

Compliance with provisions, §54-2601.

Fees for permits and inspections, §54-2619.

Exceptions, §54-2619.

N

NAMES.

Architects.

Licenses.

Firm name, §54-307.

NATUROPATHIC PHYSICIANS,

§§54-5101 to 54-5118.

Board of naturopathic medical examiners.

Composition, §54-5108.

NATUROPATHIC PHYSICIANS

—Cont'd

Board of naturopathic medical examiners —Cont'd

Continuing education for licensees, §54-5109.

Creation, §54-5108.

Examination of applicants, §54-5109.

Powers and duties, §54-5109.

Quorum, §54-5108.

Rulemaking authority, §54-5109.

Construction of act.

Public policy, §54-5101.

Severability, §54-5118.

Controlled substances.

Prohibited from dispensing, §54-5105.

Definitions, §54-5102.**Disciplinary action against****licensees, §§54-5114 to 54-5117.**

Compelling attendance of witnesses, §54-5114.

Enforcement penalties, §54-5117.

Grounds, §54-5115.

Hearings, §§54-5114, 54-5116.

Investigations, §54-5114.

Opportunity to be heard, §54-5116.

Disclosure requirements, §54-5107.**Licensure.**

Credentials, §54-5112.

Degree and training qualifications, §54-5112.

Deposit of fees, §54-5111.

Disciplinary action against licensees, §§54-5114 to 54-5117.

Exempt persons from act, §54-5106.

Experience qualifications, §54-5112.

License fees, §54-5111.

Out-of-state applicants, §54-5113.

Qualifications for licensure, §54-5112.

Requirements for licensing, §54-5103.

Scope of practice, §54-5104.

Unlicensed practice, §54-5103.

Naturopathic childbirth attendance.

Special competency certificate, §54-5109.

Naturopathic medical formulary council.

Establishment, §54-5110.

Practice of natural health care services.

Disclosure requirements, §54-5107.

Exempt persons from act, §54-5106.

Legislative intent, §54-5101.

Penalties for unlicensed practice, §54-5117.

NATUROPATHIC PHYSICIANS

—Cont'd

Practice of natural health care services —Cont'd

Prohibited surgical procedures, §54-5105.

Scope of practice, §54-5104.

Severability of act, §54-5118.**Surgical procedures.**

Prohibited from performing, §54-5105.

Titles, abbreviations or insignia.

Misrepresentation, §54-5103.

Unlicensed practice, §§54-5103, 54-5117.**NEGLIGENCE.****Chiropractors.**

Unlawful services.

Rendition as prima facie evidence of negligence, §54-705.

Engineers.

Disciplinary action, §54-1220.

Geologists.

Gross negligence.

Grounds for suspension or revocation of certificate, §54-2819.

Physicians and surgeons.

Unlicensed practice, §54-1804.

Veterinarians.

Gross negligence.

Grounds for revocation or suspension of license, §54-2113.

NONRESIDENTS.**Dental hygienists.**

Issuance of license to applicants licensed in another state, §54-916A.

Dentists.

License reciprocity, §54-916B.

Engineers, §54-1223.**Geologists.**

Exceptions to act, §54-2822.

Pharmacies.

Mail service pharmacies located out-of-state, §§54-1740 to 54-1748.

Real estate appraisers.

Licenses or certification, §54-4115.

Service of process, §54-4115.

Surveys and surveyors, §54-1223.**NOTICE.****Chiropractors.**

Licenses.

Denial, §54-708.

NOTICE —Cont'd**Dentists.**

- Failure of examination, §54-918.
- Vacancy on board, §54-908.

Dentures.

- Freedom of choice of dentures act.
- Notice of board address, §54-3320.

Electrical contractors and journeymen.

- Defective installations, §54-1004.

Landscape architects.

- Disciplinary proceedings, §54-3004.

Midwives.

- Notice to clients with certain disorders, conditions, etc., §54-5511.

Morticians, funeral directors and embalmers.

- Hearing on denial, suspension or revocation of license, §54-1117.

Pharmacists and pharmacies.

- Drug outlets.
- Reports to board of pharmacy, §54-1731.
- Meetings of board, §54-1715.
- Out-of-state mail service pharmacies.
- Notifications, §54-1744.
- Vacancy on board, §54-1709.

Plumbing and plumbers.

- Examinations, §54-2612.
- Time and place of examinations, §54-2612.
- Inspections, §54-2626.

Prescription drugs.

- Notification of drug product selection for epilepsy and seizure drugs, §54-1770.

Public works contractors.

- Filing of notices and income tax returns, §54-1904A.

Shorthand reporters.

- Examinations, §54-3111.

Student athlete agents.

- Notice to educational institution, §54-4811.

Veterinarians.

- Expiration of license, §54-2112.

NUISANCES.**Pharmacists and pharmacies.**

- Unlawful sales of legend drugs.
- Declaration of common nuisance, §54-1736.

NURSES, §§54-1401 to 54-1418.**Advanced practice registered nurses.**

- Defined, §54-1402.
- Licenses, §54-1409.

NURSES —Cont'd**Appeals.**

- Disciplinary action, §54-1413.

Barbers.

- Persons exempt from chapter, §54-504.

Board of nursing, §§54-1403 to 54-1405.

- Advisory committee, §54-1417.
- Membership, §54-1403.
- Powers and duties, §54-1404.
- Certified medication assistant (MA-C), §54-1406A.
- State board of nursing account, §54-1405.

Certified medication assistant (MA-C), §54-1406A.**Corrections.**

- Use of medical attendants by department of corrections.
- Exceptions to nursing licensing requirements, §54-1412.

Criminal offenses.

- Unlawful conduct, §54-1414.

Definitions, §54-1402.**Disciplinary action, §54-1413.**

- Certified medication assistant (MA-C), §54-1406A.

Emergencies.

- Exceptions to license requirements, §54-1412.

Emeritus license, §54-1410.**Fees.**

- Practical nurses.
- Licenses, §54-1407.
- Registered nurses.
- Licenses, §54-1408.
- State board of nursing fund.
- Deposit of fees collected, §54-1405.

Fines.

- Violations of section, §54-1414.

Fingerprinting for license, §54-1401.**Hearings.**

- Disciplinary actions, §54-1413.

Injunctions.

- Violations of act.
- Authority of board to maintain action, §54-1416.

Licensed practical nurses.

- Defined, §54-1402.
- Qualifications for license, §54-1407.

Licensed registered nurses.

- Defined, §54-1402.

Licenses.

- Compact.
- Definitions, §54-1418.
- Continuation of licenses issued prior to effective date of act, §54-1415.

NURSES —Cont'd**Licenses —Cont'd**

- Emeritus license, §54-1410.
- Exceptions to license requirements, §54-1412.
- Existing licenses, §54-1415.
- Falsifying or forging application, §54-1414.
- Fees, §54-1407.
 - Renewal, §54-1411.
- Fingerprinting for license, §54-1401.
- Practical nurses, §54-1407.
- Practice without license, §54-1414.
- Registered nurses, §54-1408.
- Renewal, §54-1411.
- Required, §54-1401.
- Temporary license, §§54-1409, 54-1410A.
- Voluntary surrender of license of nurse under investigation, §54-1413.

Misdemeanors.

- Violations, §54-1414.

Nurse practitioners.

- Defined, §54-1402.

Nursing.

- Defined, §54-1402.
- Education program.
 - Defined, §54-1402.

Nursing education programs.

- Approval, §54-1406.
- Continuing compliance, §54-1406.
- Exceptions to license requirements, §54-1412.
- Initial compliance, §54-1406.
- Qualifications, §54-1406.

Optometrists.

- Limitation on application of chapter, §54-1516.

Peer entity assistance, §§54-4401 to 54-4407.**Pharmacy, unlawful practice.**

- Labeling and refilling of certain prepackaged items not considered as, §54-1721.

Practice of nursing.

- Defined, §54-1402.

Probation, §54-1414.**Purpose of act, §54-1401.****Reciprocity.**

- Licensed practical nurses, §54-1407.
- Registered nurses, §54-1408.

Registered nurse anesthetist.

- Defined, §54-1402.

Registered nurses.

- Advanced practice registered nurses.
 - Defined, §54-1402.
 - Licenses, §54-1409.

NURSES —Cont'd**Registered nurses —Cont'd**

- Licensed registered nurses, defined, §54-1402.
- Licenses, §54-1408.

Representation as nurse.

- Only licensed nurses, §54-1401.

Subpoenas.

- Disciplinary hearing, §54-1413.

Temporary licenses, §§54-1409, 54-1410A.**Unlawful conduct, §54-1414.****Violations.**

- Injunctions.
 - Authority of board to maintain action for injunction, §54-1416.

NURSING HOME**ADMINISTRATORS, §§54-1601 to 54-1616.****Appeals.**

- Judicial review of board actions, §54-1614.

Board of examiners, §§54-1603, 54-1604.

- Appeals from, §54-1614.

Continuing education program.

- Attendance, §54-1608.

Criminal offenses.

- Violations generally, §54-1611.

Definitions, §54-1601.**Discipline, §54-1612.****Educational programs, §54-1607.****Evidence.**

- Board of examiners.
 - Board not bound by strict rules of evidence, §54-1604.

Examinations.

- Administrators-in-training.
 - Examination after one year, §54-1610.
- Frequencies, §54-1606.
- Qualifications for examination, §54-1605.
- Subject matter, §54-1606.
- Where and when held, §54-1606.

Examiners.

- Board of examiners, §§54-1603, 54-1604, 54-1614.
- Defined, §54-1601.

Executive secretary.

- Defined, §54-1601.

Federal aid.

- Administration of federal funds by board, §54-1607.

Fees.

- Disposition of fees, §54-1616.
- Licenses.
 - Applications, §54-1604.

NURSING HOME**ADMINISTRATORS —Cont'd****Fraud.**

Misdemeanors listed, §54-1611.

Hearings.

Board of examiners.

Rules of evidence, §54-1604.

Judicial review of board actions,
§54-1614.**Licenses.**

Applications.

Fees, §54-1604.

Expiration, §54-1608.

Fees.

Applications, §54-1604.

Indorsement, §54-1609.

Issuance, §54-1607.

Practice by unlicensed person
prohibited, §54-1602.

Provisional licenses.

Termination, §54-1607.

Qualifications for examination for
license, §54-1605.

Reinstatement of expired license,
§54-1608.

Reissuance of revoked license,
§54-1613.

Religious exemption, §54-1607.

Renewal, §54-1608.

Revocation or suspension.

Reissuance of revoked license,
§54-1613.

Supervision by licensed
administrator required,
§54-1602.

Unlicensed practice, §54-1611.

Misdemeanors.

List of misdemeanors, §54-1611.

Nursing home**administrators-in-training.**

Defined, §54-1601.

Examinations, §54-1610.

Quarterly reports, §54-1610.

Permits.

Administrators-in-training.

Temporary permits, §54-1610.

Practice of nursing home
administration.

Defined, §54-1601.

Qualifications for examination,
§54-1605.**Reciprocity.**

Licenses.

Indorsement, §54-1609.

Religion.

Licenses.

Religious exemption, §54-1607.

NURSING HOME**ADMINISTRATORS —Cont'd****Reports.**

Administrators-in-training.

Quarterly reports, §54-1610.

Reprimands.

Censures or other discipline,
§54-1612.

Rules and regulations.

Board of examiners.

Power to promulgate, §54-1604.

Supervision by licensed
administrator required,
§54-1602.

Exception, §54-1602.

United States.

Administration of federal funds by
board, §54-1607.

Violations.

Misdemeanors.

List of misdemeanors, §54-1611.

NURSING HOMES.**Administrators, §§54-1601 to**
54-1616.**NUTRITIONISTS.****Dietitians, §§54-3501 to 54-3512.****O****OATHS.****Barbers.**

False affidavit as perjury, §54-520.

Cosmeticians.

False statements and oath perjury,
§54-820.

Geologists.

Board of registration for professional
geologists, §54-2803.

Public works contractors.

License board.

Authority to administer oaths,
§54-1918.

Surveys and surveyors.

Authority of professional land
surveyors to administer and
certify oaths, §54-1228.

OCCUPANCY TAX, §§54-1601 to
54-1616.**OCCUPATIONAL THERAPISTS,**
§§54-3701 to 54-3722.**Aide in the delivery of****occupational therapy services.**

Defined, §54-3702.

Supervision, §54-3715.

Association.

Defined, §54-3702.

OCCUPATIONAL THERAPISTS

—Cont'd

Complaints against licensees,
§54-3716.**Construction and interpretation.**
Severability of provisions, §54-3722.**Criminal offenses.**

Violations of provisions, §54-3720.

Definitions, §54-3702.**Deposits.**

Fees, §54-3719.

Disciplinary action, §54-3720.Complaints against licensees,
§54-3716.

Unprofessional conduct.

What constitutes, §54-3718.

Examinations.

Licensure, §§54-3706, 54-3708.

**Exemptions from licensure
requirements,** §54-3704.**Fees.**

Deposit, §54-3719.

Licenses, §54-3712.

Issuance upon payment, §54-3710.

Legislative declaration, §54-3701.**Licenses.**

Applications, §§54-3706, 54-3707.

Complaints against licensees,
§54-3716.

Denial, §54-3713.

Examinations, §§54-3706, 54-3708.

Exemptions from requirement,
§54-3704.

Expiration, §54-3711.

Fees, §54-3712.

Issuance upon payment, §54-3710.

Inactive status, §54-3711.

Indorsement, §54-3709.

Issuance, §54-3710.

Limited permit, §54-3705.

Supervision of holder, §54-3715.

Qualifications, §54-3706.

Reciprocity, §54-3709.

Reinstatement, §54-3711.

Renewal, §54-3711.

Refusal to renew, §54-3713.

Required, §54-3703.

Revocation or suspension, §54-3713.

Temporary license, §54-3705.

Unlicensed practice.

Unlawful, §54-3703.

Waiver of requirements, §54-3709.

Licensure board.

Appointment of members, §54-3714.

Chairman, §54-3714.

Compensation of members, §54-3714.

Composition, §54-3714.

Duties, §54-3717.

OCCUPATIONAL THERAPISTS

—Cont'd

Licensure board —Cont'd

Meetings, §54-3714.

Number of members, §54-3714.

Powers, §54-3717.

Qualifications of members, §54-3714.

Quorum, §54-3714.

Terms of members, §54-3714.

Misdemeanors.

Violations of provisions, §54-3720.

Occupational therapy assistants.

Defined, §54-3702.

Supervision, §54-3715.

Permits.

Limited permit, §54-3705.

Supervision of holder, §54-3715.

Purpose of provisions, §54-3701.**Reciprocity.**

Licenses, §54-3709.

Rules and regulations.

Licensure board, §54-3717.

Severability of provisions, §54-3722.**Unprofessional conduct.**

What constitutes, §54-3718.

OCCUPATIONS.**Professions, vocations and****businesses,** §§54-101 to 54-5513.**OIL AND GAS.****Liquefied petroleum gas,** §§54-5301
to 54-5317.**OPHTHALMIC LENS.****Optometrists.**Acceptance for duplication by other
than licensed optometrist or
physician, §54-1517.**OPTOMETRISTS,** §§54-1501 to
54-1525.**Advertisements.**

Making unapproved advertising.

Grounds for revocation of license,
§54-1510.**Alcoholic beverages.**Habitual or excessive use or abuse of
alcohol.Grounds for revocation of license,
§54-1510.**Attorney general.**

Violations.

Duty to prosecute, §54-1513.

Board of optometry, §§54-1503,
54-1508, 54-1509.**Bureau of occupational licenses.**

Powers and duties, §54-1518.

Prosecution of complaints, §54-1518.

OPTOMETRISTS —Cont'd**Cappers.**

Employment or use as ground for license revocation, §54-1510.

Conflicts of interest.

Referrals by optical firms prohibited, §54-1525.

Criminal offenses.

Grounds for revocation of license, §54-1510.

Practice without a license, §54-1502.

Definitions.

Ophthalmic materials, §54-1525.

Practice of optometry, §54-1501.

Diseases.

Communicable, contagious or infectious diseases which endanger the health of patients.

Grounds for revocation of license, §54-1510.

District courts.**Injunctions.**

Procedure for obtaining injunction, §54-1524.

Drugs.

Habitual or excessive use or abuse of drugs.

Grounds for revocation of license, §54-1510.

Examinations.

Applications, §54-1519.

Conduct of examination, §54-1521.

Fees, §54-1523.

Qualifications of applicants, §54-1520.

Subjects included, §54-1521.

False or assumed names.

Practicing optometry under.

Grounds for revocation of license, §54-1510.

Fees.

Examinations, §54-1523.

Failure to pay fees.

Grounds for revocation of license, §54-1510.

Licenses.

Renewal, §54-1506.

Fines.

Unlicensed practice, §54-1502A.

Fraud.

Grounds for revocation of license, §54-1510.

Incompetency.

Grounds for revocation of license, §54-1510.

Injunctions.

Procedure for obtaining injunction, §54-1524.

OPTOMETRISTS —Cont'd**Injunctions —Cont'd**

Violations of law or rules and regulations, §54-1512.

Investigations.

Unlicensed practice, §54-1502A.

Legislative declaration, §54-1501.**Lenses.**

Ophthalmic lens or prism.

Acceptance for duplication by other than licensed optometrist or physician prohibited, §54-1517.

Licenses.

Display, §54-1522.

Exemptions, §54-1515.

Expiration, §54-1522.

Fees.

Renewal of license, §54-1506.

Issuance, §54-1522.

Prerequisite to practice, §54-1502.

Recording, §54-1522.

Reinstatement of expired license, §54-1522.

Renewal, §54-1522.

Fees, §54-1506.

Revocation.

Action in district court, §54-1512.

Grounds, §54-1510.

Limitation on application for license after revocation, §54-1512.

Limitation on application of chapter, §54-1515.

Nurses, school teachers or welfare workers, §54-1516.

Mentally ill.

Grounds for revocation of license, §54-1510.

Misdemeanors.

Practicing without license or on expired, revoked or suspended license, §54-1502.

Nurses.

Limitation on application of chapter, §54-1516.

Ophthalmic lens or prism.

Acceptance for duplication by other than licensed optometrist or physician prohibited, §54-1517.

Ophthalmic materials.

Defined, §54-1525.

Referrals by optical firms prohibited, §54-1525.

Peer entity assistance, §§54-4401 to 54-4407.**Practice of optometry.**

Defined, §54-1501.

OPTOMETRISTS —Cont'd**Practice of optometry —Cont'd**

Examination, diagnosis or treatment,
§54-1501.

Licenses.

Practice without license or on
expired, revoked, etc., license,
§54-1502.

Investigations and remedies,
§54-1502A.

Prerequisite for practice, §54-1502.

Prosecuting attorneys.**Violations.**

Duty to prosecute violations,
§54-1513.

Public assistance and welfare.**Welfare workers.**

Limitation on application of
chapter, §54-1516.

Publications.

Directory and law, §54-1514.

Qualifications of applicants,
§54-1520.**Referrals by optical firms.**

Prohibited, §54-1525.

Steerers.

Employment or use as grounds for
revocation of license, §54-1510.

Teachers.

Limitation on application of chapter,
§54-1516.

Topical pharmaceutical agents.

Authority to apply, §54-1501.

Violations.**Attorney general.**

Duty to prosecute, §54-1513.

Grounds for revocation of license,
§54-1510.

Prosecuting attorneys.

Duty to prosecute violations,
§54-1513.

Welfare.

Limitation on application of chapter.
Welfare workers, §54-1516.

ORDERS.**Real estate brokers and
salespersons.**

Real estate recovery fund.

Court order requiring payment
from, §54-2073.

ORGAN DONORS.**Morticians, funeral directors and
embalmers.**

Interference with right to make
anatomical gift, §54-1118.

OSTEOPATHS.**Pharmacists and pharmacies.**

Delivery and administration of
prescription drugs, §54-1721.

**OUT-OF-STATE MAIL SERVICE
PHARMACY LICENSING ACT,**
§§54-1740 to 54-1748.**P****PARAMEDICS.****Boxing, sparring and wrestling.**

Medical emergencies.

Paramedical units required to be
present at arena, §54-421.

PARTNERSHIPS.**Accountants.**

Use of title, §54-220.

Architects.

Foreign partnership practice,
§54-316.

Landscape architects.

Registration, §54-3003.

Real estate appraisers.

Use of term "state licensed or
certified real estate
appraiser," §54-4111.

**Real estate brokers and
salespersons.****Licenses.**

Primary licenses for legal business
entities.

Additional requirements,
§54-2016.

Surveys and surveyors.

Practice by business entity, §54-1235.

PAYMENT BONDS.**Public contractors bond act,**
§§54-1925 to 54-1930.**PAY PER VIEW.****Boxing, sparring and wrestling.**

Simultaneous telecasts, §§54-405,
54-408, 54-413.

PEER ENTITY ASSISTANCE,
§§54-4401 to 54-4407.**PENDENTE LITE.****Injunctions.**

Accountants, §54-223.

PERJURY.**Barbers.**

False affidavits, §54-520.

Cosmeticians.

False statements and oaths or
affidavits, §54-820.

PERPETUAL INJUNCTIONS.

Accountants, §54-223.

PERSONAL PROPERTY.**Real estate brokers and salespersons.**

Transactions involving, compliance with chapter required, §54-2003.

PETITIONS.**Chiropractors.**

Reinstatement of license, §54-713.

Real estate brokers and salespersons.

Real estate recovery fund.
Recovery from, §§54-2071, 54-2072.

PETROLEUM.

Liquefied petroleum gas, §§54-5301 to 54-5317.

PHARMACISTS AND

PHARMACIES, §§54-1701 to 54-1759.

Abandonment of patient.

Grounds for medical discipline, §54-1814.

Abuse or exploitation of patients.

Grounds for medical discipline, §54-1814.

Actions.

Burden of proof.
Actions for enforcement of chapter, §54-1737.

Advertising.

Grounds for medical discipline, §54-1814.

Board of pharmacy.

Compensation, §54-1714.
Discipline.
Authority of board, §54-1718.
Employees.
Classified employees, §54-1716.
Compensation, §54-1716.
Power of board to employ persons, §54-1716.
Enforcement of act, §54-1706.
Established, §54-1706.
Executive director, §54-1713.
Compensation, §54-1714.
Ex officio member of board, §54-1713.

Fees.

Responsibilities as to fees, §54-1720.

Licenses.

Authority of board, §54-1718.
Renewal, §54-1724.

Meetings, §54-1715.

Members, §§54-1707 to 54-1709.

PHARMACISTS AND

PHARMACIES —Cont'd

Board of pharmacy —Cont'd

Officers, §54-1713.
Organization, §54-1713.
Powers and duties, §54-1706.
Qualifications of members, §§54-1707, 54-1708.
Removal of members, §54-1712.
Residence of members, §54-1708.
Rules and regulations.
Authority to promulgate, §54-1717.
Terms of office, §54-1710.
Vacancies, §§54-1709 to 54-1711.
Wholesale drug distribution.
Enforcement by board, §§54-1756, 54-1757.
Licensing of distributors generally, §54-1753.
Order to cease distribution, §54-1756.

Burden of proof.

Actions for enforcement of chapter, §54-1737.

Citation of act, §54-1701.

Confidentiality of information.

Failure to safeguard confidentiality of medical records.
Grounds for medical discipline, §54-1814.

Confidentiality of prescriptions and patient information,
§54-1727.**Construction and interpretation.**

Out-of-state mail service pharmacies.
Legislative declaration, §54-1741.
Severability of provisions, §54-1771.

Continuing pharmacy education,
§54-1725.**Conviction of crimes involving moral turpitude,**
§54-1814.**Counseling of patients or caregivers.**

Prospective drug review and counseling, §54-1739.
Records and maintenance of patient information, §54-1735.

Criminal offenses.

Criminal prosecutions for violations of act, §54-1728.
Legend drugs.
Dispensing or delivering, §54-1732.
Mail service pharmacies located out-of-state.
Violations generally, §54-1748.
Unlawful practice of pharmacy, §54-1721.

PHARMACISTS AND**PHARMACIES —Cont'd****Criminal offenses —Cont'd**

Wholesale drug distribution,
§54-1759.

Criminal procedure.

Proof that drug is prescription or
legend drug, §54-1738.

Definitions, §54-1705.

Out-of-state mail service pharmacy,
§54-1742.

Practice of pharmacy, §54-1704.

Wholesale drug distribution,
§54-1752.

Dentists.

Delivery and administration of
prescription drugs, §54-1721.

Devices.

Responsibilities of board, §54-1719.

Dietary fluoride supplements.

Authority to prescribe, §54-1704.

Discipline.

Grounds for discipline, §54-1726.

State board of pharmacy.

Responsibilities for discipline,
§54-1718.

Drug or device outlets, §§54-1729 to 54-1732.

Notice.

Changes in conditions, §54-1731.

Records.

Failure to keep records, §54-1732.

Registration, §54-1729.

Application procedures, §54-1730.

Reports.

Notification to board of pharmacy,
§54-1731.

Rules and regulations, §54-1729.

Selling and distributing
nonprescription drugs, §54-1729.

Violations, §54-1732.

Drugs.

State board of pharmacy.

Responsibilities for drugs,
§54-1719.

Duties and powers, §54-1720.**Education.**

Continuing education, §54-1725.

Electronic transmission of prescription drug orders, §54-1733.**Enforcement of act.**

Board of pharmacy, §54-1706.

Evidence.

Proof that drug is prescription drug
or legend drug, §54-1738.

Examinations.

Qualifications for licensure by
examination, §54-1722.

PHARMACISTS AND**PHARMACIES —Cont'd****Fees.**

Board of pharmacy.

Determination of fees to be
collected, §54-1720.

Registration.

Certificates, §54-1730.

Felonies.

Dispensing or delivering legend
drugs, §54-1732.

Fines.

Legend drugs.

Violations, §54-1732.

Unlawful practice of pharmacy,
§54-1721.

Wholesale drug distribution,
§54-1759.

Fingerprints.

Applicants for license.

Fingerprint-based criminal history
records check, §54-1718.

Flu shots.

Authority to prescribe, §54-1704.

Gift splitting.

Grounds for medical discipline,
§54-1814.

Governor.

State board of pharmacy.

Appointment of members,
§54-1709.

Filling vacancies, §54-1711.

Removal of members, §54-1712.

Hospitals.

Sale of legend drugs.

Exceptions to provisions, §54-1734.

Idaho pharmacy act.

Short title of act, §54-1701.

Inspections.

Out-of-state mail service pharmacies,
§54-1745.

Legend drugs.

Electronic transmission of
prescription drug orders,
§54-1733.

Issuing invalid prescriptions or drug
order, §54-1733.

Manufacturers and wholesalers to
maintain records, §54-1735.

Nuisances.

Unlawful sales.

Declaration of common nuisance,
§54-1736.

Proof that drug is legend drug,
§54-1738.

Sales.

Exceptions, §54-1734.

PHARMACISTS AND**PHARMACIES —Cont'd****Legend drugs —Cont'd**

Validity of prescription or drug orders for legend drugs, §54-1733.

Violations and penalties, §54-1732.

Legislative declaration, §54-1702.**Licenses.**

Board of pharmacy.

Renewal, §54-1724.

Responsibility for licensing, §54-1718.

Fingerprints.

Criminal history records check, §54-1718.

Mail service pharmacies located out-of-state, §54-1743.

Revocation or suspension, §54-1748.

Qualifications for licensure by examination, §54-1722.

Reciprocity.

Qualifications for licensure by reciprocity, §54-1723.

Renewal, §54-1724.

Refusal to renew.

Grounds, §54-1726.

Revocation.

Grounds, §54-1726.

Imposition of penalties by board, §54-1728.

Mail service pharmacies located out-of-state, §54-1748.

Suspension.

Grounds, §54-1726.

Mail service pharmacies located out-of-state, §54-1748.

Penalties imposed by board, §54-1728.

Unlawful practice, §54-1721.

Mail service pharmacies located

out-of-state, §§54-1740 to 54-1748.

Citation of act.

Short title, §54-1740.

Definition of "out-of-state mail service pharmacy," §54-1742.

Inspections, §54-1745.

Legislative declaration, §54-1741.

Licenses, §54-1743.

Revocation or suspension, §54-1748.

Notifications, §54-1744.

Patient communication, §54-1747.

Penalties, §54-1748.

Prescription drugs.

Substitutions, §54-1746.

PHARMACISTS AND**PHARMACIES —Cont'd****Mail service pharmacies located**

out-of-state —Cont'd

Reports, §54-1744.

Short title of act, §54-1740.

Toll-free telephone services, §54-1747.

Violations, §54-1748.

Manufacturers.

Records, §54-1735.

Medical records.

Failure to safeguard confidentiality.

Grounds for medical discipline, §54-1814.

Medications.

Responsibilities of board, §54-1719.

Misdemeanors.

Legend drugs.

Dispensing or delivering, §54-1732.

Mail service pharmacies located out-of-state.

Violations generally, §54-1748.

Unlawful practice of pharmacy, §54-1721.

Nonprescription drugs.

Drug or device outlets.

Sales and distribution, §54-1729.

Nonresidents.

Mail service pharmacies located out-of-state, §§54-1740 to 54-1748.

Notice.

Drug outlets.

Reports to board of pharmacy, §54-1731.

Meetings of board, §54-1715.

Out-of-state mail service pharmacies.

Notifications, §54-1744.

Vacancy on board, §54-1709.

Nuisances.

Unlawful sales of legend drugs.

Declaration of common nuisance, §54-1736.

Nurses.

Labeling and refilling of certain prepackaged items, §54-1721.

Osteopaths.

Delivery and administration of prescription drugs, §54-1721.

Patient counseling.

Prospective drug review and counseling, §54-1739.

Peer entity assistance, §§54-4401 to 54-4407.

Penalties.

Confidentiality violations, §54-1727.

PHARMACISTS AND PHARMACIES —Cont'd

Penalties —Cont'd

Drug outlets.

Violations, §54-1732.

Imposition by board, §54-1728.

Out-of-state mail service pharmacies.

Violations of provisions, §54-1748.

Physicians and surgeons.

Delivery and administration of
prescription drugs, §54-1721.

Validity of prescription for person
with whom physician does not
have prescriber-patient
relationship, §54-1733.

Powers and duties, §54-1720.

Practice of pharmacy.

Defined, §54-1704.

Legislative declaration, §54-1702.

Unlawful practice, §54-1721.

Prepackaged items, labeling and refilling by nurses, §54-1721.

Prescription drugs.

Counseling patient or caregiver.

Prospective drug review and
counseling, §54-1739.

Mail service pharmacies located
out-of-state.

Substitutions, §54-1746.

Proof that drug is prescription drug,
§54-1738.

Refilling prescriptions.

Violations, §54-1732.

Sales.

Exceptions, §54-1734.

Prospective drug review, §54-1739.

Records and maintenance of patient
information, §54-1735.

Purpose of act, §54-1703.

Reciprocity.

Qualifications for licensure by
reciprocity, §54-1723.

Records.

Drug outlets.

Failure to keep outlets, §54-1732.

Maintenance of records, §54-1735.

Refilling prescriptions.

Violations, §54-1732.

Registration.

Applications for certificates,
§54-1730.

Drug or device outlets, §54-1729.

Telepharmacy.

Practice of telepharmacy across
state lines.

Registration to engage in,
§54-1723A.

PHARMACISTS AND PHARMACIES —Cont'd

Reports.

Out-of-state mail service pharmacies,
§54-1742.

Rules and regulations.

Drug or device outlets, §54-1729.

State board of pharmacy.

Authority to promulgate, §54-1717.

Salaries.

State board of pharmacy.

Compensation of board members,
§54-1714.

Sales.

Prescription drugs.

Exceptions, §54-1734.

Regulation of sales.

Responsibilities of board, §54-1719.

Severability of provisions, §54-1771.

Short title of act, §54-1701.

Statement of purpose, §54-1703.

States.

Licenses.

Reciprocity, §54-1723.

Telepharmacy.

Drug or device outlets.

Registration, §54-1729.

Practice of telepharmacy across state
lines.

Defined, §54-1705.

Registration to engage in,
§54-1723A.

Telephones.

Out-of-state mail service pharmacies.

Toll-free telephone services,
§54-1747.

Unlawful practice, §54-1721.

Grounds for discipline, §54-1726.

Penalties, §54-1728.

Using or exhibiting title of pharmacist, §54-1721.

Validity of prescription drug orders, §54-1733.

Veterinarians.

Administration and delivery of
prescription drugs, §54-1721.

Veterinary pharmacies.

Wholesale drug distribution,
§54-1752.

Violations.

Board of pharmacy.

Power to investigate and gather
evidence, §54-1720.

Criminal prosecutions for violations
of act, §54-1728.

Drug outlets, §54-1732.

Penalties, §54-1732.

PHARMACISTS AND**PHARMACIES —Cont'd****Wholesale drug distribution,**

§§54-1751 to 54-1759.

Citation of act, §54-1751.

Criminal penalties, §54-1759.

Definitions, §54-1752.

Enforcement by board, §§54-1756,
54-1757.

Licensing of distributors.

Qualifications, §54-1753.

Required, §54-1753.

Order to cease distribution, §54-1756.

Pedigree, §54-1755.

Defined, §54-1752.

Prohibited acts, §54-1758.

Criminal penalties, §54-1759.

Title of act, §54-1751.

Transactions by distributors.

Restrictions, §54-1754.

Veterinary pharmacies, §54-1752.

Wholesale distribution, §54-1752.

Wholesalers.

Records, §54-1735.

PHYSICAL THERAPY PRACTICE,

§§54-2201 to 54-2224.

Applications.

Denial, §54-2208.

Examinations, §54-2209.

Assistants, §54-2218.**Authorization to practice, §54-2216.****Declaration of policy, §54-2202.****Definitions, §54-2203.****Disciplinary action, §54-2219.**

Judicial review, §54-2222.

Penalties, §54-2221.

Powers of board, §54-2206.

Procedures, §54-2220.

Examinations, §54-2209.**Exemptions, §54-2204.**

Licenses, §54-2213.

Foreign-educated physical therapists.

Licenses, §54-2212.

Indorsement.

Licenses, §54-2211.

Licenses.

Applications, §54-2207.

Authorization to practice, §54-2216.

Continuing education requirements,
§54-2206.

Disciplinary action, §54-2221.

Judicial review, §54-2222.

Exemptions, §54-2213.

Foreign-educated physical therapists,
§54-2212.

Qualifications, §54-2210.

Evaluation of applicants, §54-2206.

PHYSICAL THERAPY PRACTICE**—Cont'd****Licenses —Cont'd**

Qualifications —Cont'd

Indorsement, §54-2211.

Reinstatement, §54-2215.

Renewal, §54-2214.

Licensure board, §54-2205.

Defined, §54-2203.

Powers and duties, §54-2206.

Rulemaking authority, §54-2206.

Naturopathic physicians.Prohibited from performing physical
therapy, §54-5105.**Occupational licenses fund.**

Disposition of receipts, §54-2224.

Penalties for unlawful practice,

§54-2223.

Policy, §54-2202.**Short title, §54-2201.****Supervision of personnel, §54-2218.****Titles, §54-2217.****Unlawful practice, §54-2223.****PHYSICIAN-PATIENT PRIVILEGE.****Informal consultations, no
physician-patient relationship
established, §54-1821.****PHYSICIANS AND SURGEONS,**

§§54-1801 to 54-1841.

Abortion.Performing or procuring unlawful
abortion.

Reporting violations, §54-1818.

Performing or procuring unlawful
abortions.Grounds for medical discipline,
§54-1814.**Acupuncture, §§54-4701 to 54-4713.****Appeals.**

Disabled physicians.

Judicial review of final decisions of
board, §54-1839.**Attorneys' fees.**Actions for unlicensed practice,
§54-1804.**Board of medicine, §§54-1805,
54-1806.**

Athletic trainers.

Generally, §§54-3901 to 54-3917.

Dietitians.

Duties, §54-3505.

Rules and regulations, §54-3505.

Disabled physicians.

Duties of board, §54-1833.

Judicial review of final decisions of
board, §54-1839.

PHYSICIANS AND SURGEONS

—Cont'd

Board of medicine —Cont'd

Disabled physicians —Cont'd

Reports of examining committee,
§54-1836.

Disciplinary enforcement, §54-1806A.

Externs.

Registration with board, §54-1807.

Fund.

Creation, §54-1809.

Interns.

Registration with board, §54-1807.

Interviews of applicants, §54-1810.

Licenses.

Issuance, §54-1808.

Records.

Access to records, §54-1820.

Board of professional discipline,
§54-1806A.**Boxing, sparring and wrestling.**Attendance and examination of
combatants, §54-415.Exempted organizations and
entities.Physician to examine contestants
prior to holding events,
§54-406.**Burden of proof.**Provider of unlawful services,
§54-1804.**Chiropractors.**Chiropractic practice and procedures
which may be employed by
physicians, §54-704.General provisions, §§54-701 to
54-715.**Citation of chapter,** §54-1801.**Confidentiality of information.**

Board of medicine.

Access to records, §54-1820.

Informal consultations, no
physician-patient relationship
established, §54-1821.**Conflicts of interest.**

Board of professional discipline.

Disqualification for conflict,
§54-1806A.**Costs.**Actions for unlicensed practice,
§54-1804.**Criminal offenses.**

Unlicensed practice, §54-1804.

Damages.

Disabled physicians.

No liability for damages, §54-1840.

Unlicensed practice, §54-1804.

PHYSICIANS AND SURGEONS

—Cont'd

**Database of health care provider
profiles.**Patient freedom of information,
§§54-4601 to 54-4604.**Dead bodies.**

Postmortem examinations.

Consent, §54-1817.

Death.

Definition of death, §54-1819.

Determination of death, §54-1819.

Medical death.

Defined, §54-1819.

Definitions, §54-1803.**Dentists,** §§54-900 to 54-936.**Disabled physicians.**

Appeals.

Decisions of board, §54-1839.

Board of medicine.

Duties, §54-1833.

Judicial review of decisions,
§54-1839.Reports of examining committee,
§54-1836.

Citation of act, §54-1831.

Committee.

Examination by committee,
§54-1834.Failure to comply with committee
order, §54-1834.

Liability for damages, §54-1840.

Reports to board, §54-1836.

Damages.

No liability for damages, §54-1840.

Examinations.

Committee, §54-1834.

Duties of board of medicine,
§54-1833.

Hearings.

Proceedings against physicians,
§54-1837.

Licenses.

Grounds for restriction, suspension
or revocation, §54-1832.

Reinstatement, §54-1838.

Revocation.

Proceedings against physicians,
§54-1837.

Voluntary restriction, §54-1835.

Petitions for reinstatement of license,
§54-1838.Proceedings against physicians,
§54-1837.

Short title of act, §54-1831.

Discipline.

Board of professional discipline.

Adjudication of discipline or
exoneration, §54-1806A.

PHYSICIANS AND SURGEONS

—Cont'd

Discipline —Cont'd

Board of professional discipline

—Cont'd

Appointment of members,
§54-1806A.

Chairman, §54-1806A.

Compensation of members,
§54-1806A.

Composition, §54-1806A.

Confidentiality, §54-1806A.

Conflicts of interest, §54-1806A.

Creation, §54-1806A.

Delegation of authority, §54-1806A.

Disqualification of members,
§54-1806A.

Final orders.

Temporary suspensions or
restrictions pending final
order, §54-1806A.

Judicial review.

Review of decisions of board,
§54-1806A.

Licenses.

Voluntary restriction, §54-1806A.

Membership, §54-1806A.

Powers.

Additional powers, §54-1806A.

Protected actions and
communications, §54-1806A.

Quorum, §54-1806A.

Temporary suspensions or
restrictions pending final
orders, §54-1806A.

Grounds for discipline.

Medical discipline, §54-1814.

Reporting violations, §54-1818.

Medical disciplinary enforcement.

Duties of board of medicine,
§54-1806A.**Drugs.**Prescribing or furnishing dangerous
drugs.Grounds for medical discipline,
§54-1814.

Reporting violations, §54-1818.

Emergencies.

Persons rendering aid in emergency.

Unlicensed practice, §54-1804.

Evidence.Prima facie evidence of negligence,
§54-1804.

Privileged communications.

Informal consultations, no
physician-patient relationship
established, §54-1821.**PHYSICIANS AND SURGEONS**

—Cont'd

Examinations.

Disabled physicians.

Committee, §54-1834.

Duties of board of medicine,
§54-1833.

Failures, §54-1810.

Graduates of medical schools located
outside of United States and
Canada, §54-1812.

Personal interviews, §54-1810.

Written examinations.

Licensure by written examination,
§54-1810.**Externs.**

Defined, §54-1803.

Registration, §54-1807.

Unlicensed practice, §54-1804.

Fees.

Board of medicine fund.

Deposit of fees collected into fund,
§54-1809.

Fee or gift splitting.

Grounds for medical discipline,
§54-1814.

Licenses.

Inactive license fee, §54-1808.

Felonies.Conviction of felony grounds for
medical discipline, §54-1814.

Unlicensed practice, §54-1804.

Fines.

Unlicensed practice, §54-1804.

Foreign medical schools.Graduates of schools located outside
of United States and Canada.

Requirements, §54-1812.

Fraud.Grounds for medical discipline,
§54-1814.**Funds.**

State board of medicine fund.

Creation, §54-1809.

Health care provider profiles,

§§54-4601 to 54-4604.

Hearings.

Disabled physicians.

Proceedings against physician,
§54-1837.**Indorsements.**

Licensure by indorsement, §54-1811.

Informal consultations.No physician-patient relationship
established, §54-1821.**Injunctions.**

Violations, §54-1815.

PHYSICIANS AND SURGEONS

—Cont'd

Interns.

Defined, §54-1803.

Registration, §54-1807.

Unlicensed practice, §54-1804.

Legislative declaration, §54-1802.**Liability.**

Disabled physicians.

No liability for damages, §54-1840.

Licenses.

Applications, §54-1810.

Determination that applicant
unqualified, §54-1808.

Disabled physicians.

Grounds for restriction, suspension
or revocation, §54-1832.

Reinstatement of license, §54-1838.

Revocation.

Proceeding against physicians,
§54-1837.Voluntary restriction of license,
§54-1835.**Fees.**

Inactive license fee, §54-1808.

Issuance after payment of fee,
§54-1808.**Fingerprint-based criminal history
check.**Applicants for license, §§54-1810,
54-1811.Graduates of medical schools located
outside United States and
Canada, §54-1812.

Inactive licenses, §54-1808.

Indorsement, §54-1811.

Issuance, §54-1808.

License to practice medicine and
surgery.

Defined, §54-1803.

License to practice osteopathic
medicine and surgery.

Defined, §54-1803.

Personal interview by board,
§§54-1810, 54-1811.Practicing without a license,
§54-1804.

Refusal to issue license, §54-1808.

Renewal, §54-1808.

Retired physicians.

Volunteer's license, §54-1841.

Temporary license, §54-1813.

Unlicensed practice, §54-1804.

Written examinations, §54-1810.

Medical practice act.

Short title of act, §54-1801.

Medical schools.

Acceptable school of medicine.

Defined, §54-1803.

PHYSICIANS AND SURGEONS

—Cont'd

Medical schools —Cont'dGraduates of schools located outside
of United States and Canada,
§54-1812.**Morticians, funeral directors and
embalmers.**

Sending body to funeral

establishment without inquiry,
§54-1118.**Naturopathic physicians, §§54-5101
to 54-5118.****Negligence.**

Unlicensed practice, §54-1804.

Optometrists, §§54-1501 to 54-1525.**Osteopaths.**

Licenses.

License to practice osteopathic
medicine and surgery.

Defined, §54-1803.

**Patient freedom of information,
§§54-4601 to 54-4604.****Peer entity assistance, §§54-4401 to
54-4407.****Peer review information or peer
review records.**

Disclosure not required, §54-1818.

Penalties.

Unlicensed practice, §54-1804.

Pharmacists and pharmacies.Delivery and administration of
prescription drugs, §54-1721.Validity of prescription for person
with whom physician does not
have prescriber-patient
relationship, §54-1733.**Physical therapy practice,**

§§54-2201 to 54-2224.

Physician's assistant.

Advisory committee, §54-1807A.

Defined, §54-1803.

Licensing requirement, §54-1807A.

Supervision, §54-1807A.

Unlicensed practice, §54-1804.

Postmortem examinations.

Consent for examination, §54-1817.

Practice of medicine.

Defined, §54-1803.

Reporting violations, §54-1818.

Unlicensed practice, §54-1804.

Penalties and remedies, §54-1804.

Using false or assumed names in
practicing medicine.Grounds for medical discipline,
§54-1814.

PHYSICIANS AND SURGEONS

—Cont'd

Prescription drugs.

Validity of prescription for person with whom physician does not have prescriber-patient relationship, §54-1733.

Privileged communications.

Informal consultations, no physician-patient relationship established, §54-1821.

Profiles of health care providers.

Patient freedom of information, §§54-4601 to 54-4604.

Psychologists.

Unauthorized practice of medicine, §54-2313.

Purpose of chapter, §54-1802.**Reciprocity.**

Licensure by indorsement, §54-1811.

Records.

Board of medicine.
Access to records, §54-1820.

Registration.

Externs, §54-1807.
Interns, §54-1807.
Residents, §54-1807.
Temporary registry, §54-1813.

Reports.

Disabled physicians.
Report of examining committee, §54-1836.
Violations, §54-1818.

Residents.

Defined, §54-1803.
Registration, §54-1807.
Unlicensed practice, §54-1804.

Retired physicians.

Volunteer's license, §54-1841.

Sentencing.

Unlicensed practice, §54-1804.

Short title of chapter, §54-1801.**States.**

Licenses.
Reciprocity, §54-1811.

Unethical or unprofessional conduct.

Reporting violations, §54-1818.

Unethical or unprofessional practice.

Grounds for medical discipline, §54-1814.

Unlicensed practice.

Fines, §54-1804.
Penalties and remedies, §54-1804.
Sentencing, §54-1804.

Veterinarians, §§54-2101 to 54-2121.**PHYSICIANS AND SURGEONS**

—Cont'd

Violations.

Actions to enjoin violations, §54-1815.
Reporting violations by physicians, §54-1818.

Volunteer's license.

Retired physicians, §54-1841.

PHYSICIANS' ASSISTANTS.

Advisory committee, §54-1807A.

Defined, §54-1803.

Licensing requirement, §54-1807A.

Supervision, §54-1807A.

Unlicensed practice, §54-1804.

PLUMBING AND PLUMBERS,

§§54-2601 to 54-2630.

Actions.

Attorney general or prosecuting attorneys.

Representation in actions of proceedings under act, §54-2629.

Agents.

Inspection by agent, §54-2624.

Applicability of act.

Certificate of competency requirements, §54-2602.

Apprentices.

Classification of competency, §54-2611.

Registration and renewal, §54-2614A.

Attorney general.

Actions and proceedings involving questions under act, §54-2629.

Representation by attorney general, §54-2629.

Board, §§54-2605, 54-2606.

Examinations.

Determination of character of examination, §54-2609.

Fund, §54-2630.

Secretary.

Administrator of division of building safety, §54-2607.

Certificates of competency.

Carrying certificates on person or at work site, §54-2618.

Character of examination, §54-2609.

Classification of competency, §54-2611.

Contents of certificate, §54-2615.

Display of certificates, §54-2618.

Exceptions, §§54-2602, 54-2610.

Expiration, §54-2617.

Fees, §54-2616.

Form of certificate, §54-2615.

PLUMBING AND PLUMBERS

—Cont'd

Certificates of competency —Cont'd

Holders required to carry on person
or at work site, §54-2618.

Issuance, §54-2615.

Prerequisite to work of plumbing,
§54-2610.

Refusal to renew, §54-2608.

Renewal, §54-2617.

Refusal to renew, §54-2608.

Revocation, §54-2608.

Suspension, §54-2608.

Transfer, §54-2610.

Cities electing to implement plumbing code enforcement program.

Compliance with provisions,
§54-2601.

Classification of competency,
§54-2611.**Contractors.**

Application and registration fee,
§54-2614.

Classification of competency,
§54-2611.

Fee for certificate, §54-2616.

Criminal offenses.

Violations of chapter generally,
§54-2628.

Declaration of policy, §54-2601.**Definitions,** §§54-2603, 54-2604.**Division of building safety.**

Administrator.

Powers and duties, §54-2607.

Examinations, §54-2609.

Application, §54-2613.

Character of examination, §54-2609.

Extent of examination, §54-2609.

Notice of time and place, §54-2612.

Place of examination, §54-2612.

Prerequisite to work of plumbing.

Certificate prerequisite, §54-2610.

Time and place for examination.

Determination by board, §54-2612.

Exceptions, §54-2602.**Fees.**

Application and registration fee,
§54-2614.

Application for permit, §54-2623.

Inspection fee, §54-2623.

Certificates of competency, §54-2616.

Inspections.

Reinspection, §54-2626.

Municipal fees for permits and
inspections, §54-2619.

Exceptions, §54-2619.

Permits, §54-2623.

PLUMBING AND PLUMBERS

—Cont'd

Fees —Cont'd

Reinspection fee, §54-2626.

Inspections.

Agents, §54-2624.

Application for permit.

Fee, §54-2623.

Appointment of inspectors, §54-2627.

Approval and certification of
inspection, §54-2625.

Certification of inspection, §54-2625.

Fees, §54-2623.

Modular buildings, §54-2622A.

Municipal fees for inspections,
§54-2619.

Exceptions, §54-2619.

Notification for inspection, §54-2626.

Qualifications of inspectors,
§54-2627.

Reinspection fee, §54-2626.

Test for inspection by agent,
§54-2624.

Unlawful practices, §54-2627.

Journeyman.

Application and registration fee,
§54-2614.

Classification of competency,
§54-2611.

Fees for certificates, §54-2616.

Misdemeanors.

Penalty for violation of chapter,
§54-2628.

Violations of act, §54-2628.

Municipal corporations.

Fees.

Exceptions, §54-2619.

Permits and inspections, §54-2619.

Notice.

Examinations, §54-2612.

Time and place of examinations,
§54-2612.

Inspections, §54-2626.

Permits.

Application for permits, §54-2622.

Fee, §54-2623.

Requirements, §54-2622.

Exceptions to permit requirement,
§54-2620.

Fees.

Payment, §54-2623.

Issuance, §54-2622.

Municipal fees for permits, §54-2619.

Exceptions, §54-2619.

Plans and specifications.

Requirements prior to issue of
permit, §54-2622.

Required permits, §54-2620.

PLUMBING AND PLUMBERS

—Cont'd

Permits —Cont'd

Requirements, §54-2622.

Work not requiring permits,
§54-2621.**Plumbing board fund**, §54-2630.**Plumbing systems.**

Defined, §54-2604.

Private plumbing systems, §54-2604.**Prosecuting attorneys.**Actions and proceedings under act,
§54-2629.Representation by prosecuting
attorneys, §54-2629.**Public plumbing systems**, §54-2604.**Purpose of act**, §54-2601.**Tests.**

Inspections by agents, §54-2624.

Violations.

Penalties, §54-2628.

Water conditioning equipment.

Defined, §54-2604.

PLUMBING BOARD FUND,
§54-2630.**PODIATRISTS**, §§54-601 to 54-615.**Accusation for license revocation
or suspension**, §54-610.**Alcoholic beverages.**

Licenses.

Grounds for suspension or
revocation, §54-608.**Appeals review.**Judicial review of license revocation
or suspension, §54-611.**Contempt.**Disobedience of subpoena in license
suspension or revocation
proceedings, §54-610.**Criminal offenses.**

Practice without license, §54-614.

Definitions.

Podiatry, §54-602.

Depositions.License suspension or revocation
proceedings, §54-610.**Deposits.**Moneys deposited in state treasury,
§54-615.**Drugs.**

Licenses.

Grounds for suspension or
revocation, §54-608.**Examinations**, §54-606.

License by indorsement, §54-613.

Licensed persons.

Examination not required, §54-612.

PODIATRISTS —Cont'd**Examinations** —Cont'd

Subjects, §54-606.

Fees.License by indorsement, §54-613.
Licenses.

Application fee, §54-606.

Reinstatement of license, §54-607.

Renewal, §54-607.

Moneys deposited in state treasury,
§54-615.**Fraud.**

Licenses.

Grounds for suspension or
revocation, §54-608.**Hearings.**License suspension or revocation,
§54-610.**Judicial review of license
revocation or suspension**,
§54-611.**Legislative declaration**, §54-601.**Licenses.**

Applications, §54-606.

Denial.

Grounds, §54-608.

Display, §54-607.

Examinations, §§54-606, 54-612,
54-613.

Expiration, §54-607.

Fees, §§54-606, 54-607.

Issuance, §54-607.

Practice without license.

Misdemeanors, §54-614.

Prerequisite to practice, §54-603.

Qualifications, §54-607.

Reciprocity, §54-613.

Refusal to renew.

Grounds, §54-608.

Renewals, §54-607.

Suspension or revocation, §54-610.

Grounds, §54-608.

Judicial review, §54-611.

Unprofessional or dishonorable
conduct justifying suspension or
revocation, §54-609.**Misdemeanors.**

Practice without license, §54-614.

Peer entity assistance, §§54-4401 to
54-4407.**Podiatry.**

Defined, §54-602.

Practice of podiatry.

Licenses.

Practicing without license a
misdemeanor, §54-614.

Prerequisite, §54-603.

PODIATRISTS —Cont'd**Practice of podiatry —Cont'd**

Unprofessional or dishonorable conduct.

Suspension or revocation of license, §54-609.

Purposes of act, §54-601.**Service of process.**

Accusation in license suspension or revocation proceedings, §54-610.

State board of podiatry, §§54-604, 54-605.**Subpoena duces tecum.**

Issuance in license suspension or revocation proceedings, §54-610.

Unprofessional conduct.

Grounds for suspension or revocation of license, §54-608.

Unprofessional or dishonorable conduct justifying suspension or revocation of license.

Defined, §54-609.

Violations.

Grounds for revocation or suspension of license, §54-608.

Witnesses.

License suspension or revocation proceedings.

Powers of board, §54-610.

POPULAR NAMES AND SHORT TITLES.

Accountancy act, §§54-201 to 54-228.

Athlete agents act, §§54-4801 to 54-4820.

Barber law, §§54-501 to 54-530.

Certified shorthand reporters act, §§54-3101 to 54-3118.

Chiropractic practice act, §§54-701 to 54-715.

Contractor registration act, §§54-5201 to 54-5219.

Cosmetology law, §§54-801 to 54-837.

Counselor-client privilege, §54-3410.

Disabled physician act, §§54-1831 to 54-1841.

Drinking water and wastewater professionals licensing act, §§54-2401 to 54-2414.

Driving businesses act, §§54-5401 to 54-5409.

Freedom of choice of dentures act, §§54-3301 to 54-3323.

Landscape architect registration and licensing act, §§54-3001 to 54-3005.

Liquefied petroleum gas public safety act, §§54-5301 to 54-5317.

POPULAR NAMES AND SHORT TITLES —Cont'd

Medical practice act, §§54-1801 to 54-1820.

Out-of-state mail service pharmacy licensing act, §§54-1740 to 54-1748.

Pharmacy act, §§54-1701 to 54-1739.

Physical therapy practice act, §§54-2201 to 54-2224.

Professional geologists act, §§54-2801 to 54-2822.

Public contracts bond act, §§54-1925 to 54-1930.

Public works construction management licensing act of 1998, §§54-4501 to 54-4514.

Public works contractors license act, §§54-1901 to 54-1924.

Racing act, §§54-2501 to 54-2517.

Real estate appraisers act, §§54-4101 to 54-4119.

Real estate brokerage representation act, §§54-2082 to 54-2097.

Real estate license law, §§54-2001 to 54-2080.

Residential care facility administrators act, §§54-4201 to 54-4216.

Respiratory care practice act of 1991, §§54-4301 to 54-4321.

Shorthand reporters act, §§54-3101 to 54-3118.

Speech and hearing services practice act, §§54-2901 to 54-2927.

Uniform athlete agents act, §§54-4801 to 54-4820.

Veterinary practice act, §§54-2101 to 54-2121.

Wholesale drug distribution act, §§54-1751 to 54-1759.

PREARRANGED FUNERAL PLANS, §§54-1139 to 54-1143.**PREGNANCY.**

Midwives, §§54-5501 to 54-5513.

PREPAID FUNERAL OR CEMETERY MERCHANDISE OR SERVICES, §§54-1129 to 54-1138.**PRESCRIPTION DRUGS.**

Drug order defined, §54-1705.

Drug product selection.

Notification for epilepsy and seizure drugs, §54-1770.

PRESCRIPTION DRUGS —Cont'd

Electronic transmission of prescription drug orders, §54-1733.

Epilepsy and seizure drugs.

Notification of drug product selection, §54-1770.

Evidence.

Proof of facts contained in public records.

Status of prescription drugs, §54-1738.

Generic drugs.

Notification of drug product selection for epilepsy and seizure drugs, §54-1770.

Legend drug donation act,

§§54-1760 to 54-1765.

Legend drugs.

Electronic transmission of prescription drug orders, §54-1733.

Issuing invalid prescriptions or drug order, §54-1733.

Manufacturers and wholesalers to maintain records, §54-1735.

Nuisances.

Unlawful sales.

Declaration of common nuisance, §54-1736.

Proof that drug is legend drug, §54-1738.

Sales.

Exceptions, §54-1734.

Validity of prescription or drug orders for legend drugs, §54-1733.

Violations and penalties, §54-1732.

Physicians and surgeons.

Validity of prescription for person with whom physician does not have prescriber-patient relationship, §54-1733.

Records.

Prescription drug status.

Proof of status, §54-1738.

Substitution of therapeutically equivalent drugs.

Notification of drug product selection for epilepsy and seizure drugs, §54-1770.

PRIVILEGED COMMUNICATIONS.

Counselors and therapists, §54-3410.

Health professional peer entity assistance.

Records and proceedings of assistance entities, §54-4403.

PRIVILEGED COMMUNICATIONS

—Cont'd

Licensed counselor-client privilege, §54-3410.

Psychologists.

Confidential relations and communications between psychologist and client, §54-2314.

Social workers.

Licensed social worker-client privilege, §54-3213.

PROBATION.

Nurses, §54-1414.

PROFESSIONAL COUNSELORS, §§54-3401 to 54-3415.

PROFESSIONS, VOCATIONS AND BUSINESSES.

Abstracters of title, §§54-101 to 54-105.

Accountants, §§54-201 to 54-228.

Acupuncture, §§54-4701 to 54-4713.

Animals.

Veterinarians, §§54-2101 to 54-2121.

Architects.

Generally, §§54-301 to 54-316.

Landscape architects, §§54-3001 to 54-3005.

Athletic trainers, §§54-3901 to 54-3917.

Barbers, §§54-501 to 54-530.

Boxing, sparring and wrestling, §§54-401 to 54-422.

Certified public accountants.

Generally, §§54-201 to 54-228.

Chiropractors, §§54-701 to 54-715.

Construction contractors.

Registration requirements, §§54-5201 to 54-5219.

Counselors and therapists

generally, §§54-3400 to 54-3415.

Court reporters.

Shorthand reporter act, §§54-3101 to 54-3118.

Dentists, §§54-900 to 54-936.

Dentures.

Freedom of choice of dentures, §§54-3301 to 54-3323.

Dietitians, §§54-3501 to 54-3512.

Electrical contractors and

journeymen, §§54-1001 to 54-1019.

Embalmers, §§54-1101 to 54-1144.

Engineers, §§54-1201 to 54-1236.

Geologists, §§54-2801 to 54-2822.

Grape growers and wine producers commission, §§54-3601 to 54-3612.

PROFESSIONS, VOCATIONS AND BUSINESSES —Cont'd

Heating, ventilation and air conditioning contractors, §§54-5001 to 54-5024.

Landscape architects, §§54-3001 to 54-3005.

Massage therapists, §§54-4001 to 54-4015.

Medical practice act, §§54-1801 to 54-1841.

Midwives, §§54-5501 to 54-5513.

Morticians, §§54-1101 to 54-1144.

Naturopathic physicians, §§54-5101 to 54-5118.

Nurses, §§54-1401 to 54-1418.

Nursing home administrators, §§54-1601 to 54-1616.

Occupational therapists, §§54-3701 to 54-3722.

Optometrists, §§54-1501 to 54-1525.

Pharmacists and pharmacies, §§54-1701 to 54-1759.

Physical therapy practice, §§54-2201 to 54-2224.

Physicians and surgeons.
Medical practice act, §§54-1801 to 54-1841.

Plumbing and plumbers, §§54-2601 to 54-2630.

Podiatrists, §§54-601 to 54-615.

Psychologists, §§54-2301 to 54-2315.

Public accountants.
Generally, §§54-201 to 54-228.

Public works contractors, §§54-1901 to 54-1930.

Racing, §§54-2501 to 54-2517.

Real estate appraisers, §§54-4101 to 54-4119.

Real estate brokers and salespersons, §§54-2001 to 54-2097.

Reporters.
Shorthand reporters, §§54-3101 to 54-3118.

Residential or assisted living facility administrators, §§54-4201 to 54-4216.

Respiratory care practice, §§54-4301 to 54-4321.

Scrap dealers, §§54-2701 to 54-2708.

Shorthand reporters, §§54-3101 to 54-3118.

Social workers, §§54-3201 to 54-3217.

Speech and hearing services practitioners, §§54-2901 to 54-2927.

PROFESSIONS, VOCATIONS AND BUSINESSES —Cont'd

Surgeons.
Physicians and surgeons, §§54-1801 to 54-1841.

Surveyors.
Engineers and surveyors, §§54-1201 to 54-1236.

Therapists.
Counselors and therapists generally, §§54-3400 to 54-3415.
Massage therapists, §§54-4001 to 54-4015.
Occupational therapists, §§54-3701 to 54-3722.
Physical therapy practice, §§54-2201 to 54-2224.

Title.
Abstracters of title, §§54-101 to 54-105.

Veterinarians, §§54-2101 to 54-2121.

Wine producers.
Grape growers and wine producers commission, §§54-3601 to 54-3612.

PROMOTERS.

Boxing, sparring and wrestling generally, §§54-401 to 54-422.

PROSECUTING ATTORNEYS.

Accountants.
Duty to prosecute violations, §54-225.
Prosecution of violations, §54-225.

Boxing, sparring and wrestling.
Enjoining events conducted without license, §54-420.

Construction contractors.
Legal counsel in actions and proceedings, §54-5218.

Cosmeticians.
Duty to prosecute violations, §54-836.

Heating, ventilation and air conditioning contractors.
Representation of division of building safety, §54-5023.

Liquefied petroleum gas.
Disciplinary action against licensees.
Duties of prosecuting attorney, §54-5317.

Optometrists.
Violations.
Duty to prosecute violations, §54-1513.

Plumbing and plumbers.
Actions and proceedings under act.
Representation by prosecuting attorneys, §54-2629.

PROSECUTING ATTORNEYS

—Cont'd

Psychologists.

Violations.

Duty to prosecute violations,
§54-2311.

Real estate appraisers.

Violations of provisions.

Prosecution by, §54-4118.

Real estate brokers and salespersons.

Duty to prosecute violations,
§54-2064.

Severability of act, §54-5219.

Social workers.

Duties under act, §54-3216.

PROSTHETIC APPLIANCES AND DEVICES.

Freedom of choice of dentures act, §§54-3301 to 54-3323.

PSYCHOLOGISTS, §§54-2301 to 54-2315.

Administration of act.

Bureau of occupational licensing to administer, §54-2315.

Board of psychologist examiners, §§54-2304, 54-2305.

Bureau chief.

Defined, §54-2302.

Bureau of occupational licenses.

Administration of act, §54-2315.

Confidentiality.

Relations and communications between psychologist and client, §54-2314.

Construction and interpretation.

Liberal construction of act, §54-2301.

Continuing education.

Rule requiring as condition of continued licensure.

Board may adopt, §54-2305.

Controlled substances.

Licenses.

Grounds for revocation of license, §54-2309.

Definitions, §54-2302.

Department.

Defined, §54-2302.

Drugs.

Licenses.

Grounds for revocation, §54-2309.

Drunkenness.

Grounds for revocation of license, §54-2309.

Evidence.

Privileged communications between psychologist and client, §54-2314.

PSYCHOLOGISTS —Cont'd

Examinations.

Applications.

Applicants for whom examination may be required, §54-2307.

Granting license without examination, §54-2312.

Examiners, §§54-2304, 54-2305.

Exemptions.

Licenses, §54-2303.

Fees.

License application fee, §54-2307.

Licenses, §54-2312.

Renewal of license, §54-2315.

Legislative declaration.

Practice of psychology, §54-2301.

Licenses.

Exemptions, §54-2303.

Expiration, §54-2315.

Fees, §54-2312.

Applications, §54-2307.

Nonissuance, §54-2309.

Qualifications, §54-2307.

Reciprocity, §54-2312.

Reinstatement of expired license, §54-2315.

Renewal, §54-2315.

Fee, §54-2315.

Required, §54-2303.

Restriction, §54-2309.

Revocation, §54-2309.

Unlicensed persons providing services under supervision and control of psychologists, §54-2303.

Misdemeanors.

Practicing without license, §54-2310.

Objects and purposes of act,

§54-2301.

Peer entity assistance, §§54-4401 to 54-4407.

Penalties.

Violations, §54-2310.

Person.

Defined, §54-2302.

Physicians and surgeons.

Unauthorized practice of medicine, §54-2313.

Practice of psychology.

Defined, §54-2302.

Legislative declaration, §54-2301.

Subject to regulation, §54-2301.

Privileged communications.

Physician and psychotherapist-patient privilege, §54-2314.

PSYCHOLOGISTS —Cont'd**Prosecuting attorneys.****Violations.**

Duty to prosecute violations,
§54-2311.

Psychological services.

Defined, §54-2302.

Qualifications for license, §54-2307.**Reciprocity.**

Licenses, §54-2312.

Senior psychologists, §54-2312A.**Sentencing.****Violations.**

Penalties, §54-2310.

Student interns.

Act not to limit activities and
services, §54-2303.

**Unauthorized practice of medicine,
§54-2313.****Unethical practices.**

Grounds for revocation of license,
§54-2309.

Violations.

Grounds for revocation of license,
§54-2309.

Penalties, §54-2310.

Prosecuting attorneys.

Duty to prosecute violations,
§54-2311.

PSYCHOTHERAPIST-PATIENT

PRIVILEGE, §54-2314.

PUBLIC ACCOUNTANTS.

Generally, §§54-201 to 54-228.

**PUBLIC ASSISTANCE AND
WELFARE.****Optometrists.**

Welfare workers.

Limitation on application of
chapter, §54-1516.

Social workers, §§54-3201 to 54-3217.

PUBLICATION.**Optometrists.**

Directory and law, §54-1514.

**PUBLIC CONTRACTS BOND ACT,
§§54-1925 to 54-1930.****PUBLIC OFFICERS AND
EMPLOYEES.****Morticians, funeral directors and
embalmers.**

Sending body to funeral
establishment without inquiry,
§54-1118.

Public works contractors.

Letting contracts to unlicensed
persons.

Misdemeanor, §54-1920.

PUBLIC UTILITIES.**Construction contractors.**

Exemption from licensing
requirements, §54-5205.

PUBLIC WORKS.**Bonds, surety.**

Public contracts bond act, §§54-1925
to 54-1930.

Construction management

licensing, §§54-4501 to 54-4514.

Contractors.

Public works contractors, §§54-1901
to 54-1930.

Engineers.

Preparation of plans, specifications
and estimates by professional
engineer required, §54-1218.

**Public works contractors, §§54-1901
to 54-1930.**

**PUBLIC WORKS CONTRACTORS,
§§54-1901 to 54-1930.**

**Abandonment of construction
project.**

Grounds for suspension or revocation
of license, §54-1914.

Actions.

Public contracts bond act.

Suit on contractor's payment bond,
§54-1927.

**Administrative enforcement
proceedings, §54-1914.**

Appeals.

Judicial review for decision,
§54-1916.

Applicability of act.

Exemptions, §54-1903.

Attorney general.

Prosecution of civil actions against,
§54-1920A.

Attorneys' fees.

Public contracts bond act.

Actions brought on bonds,
§54-1929.

Bankruptcy and insolvency.

Filing voluntary petition in
bankruptcy.

Grounds for disciplinary
proceedings, §54-1914.

Bids.

Accepting bids without license,
§54-1902.

Defined, §54-1901.

Relief from bid, §54-1904C.

Award of contract to second or next
lowest bidder, §54-1904E.

Claim of mistake, §54-1904B.

Grounds, §54-1904C.

PUBLIC WORKS CONTRACTORS

—Cont'd

Bids —Cont'd

Relief from bid —Cont'd

Procedure, §54-1904B.

Prohibition against further bidding
on same project, §54-1904D.**Bonds, surety.**Judicial review of board decisions,
§54-1916.Public contracts bond act, §§54-1925
to 54-1930.**Building laws.**Wilful or deliberate disregard and
violation.Grounds for disciplinary
proceedings, §54-1914.**Citation of act, §54-1923.****Class AAA license, §54-1904.****Class AA license, §54-1904.****Class A license, §54-1904.****Class B license, §54-1904.****Class CC license, §54-1904.****Class C license, §54-1904.****Class D license, §54-1904.****Class "Unlimited" license, §54-1904.****Conflicts of law.**Act superior to all laws in conflict,
§54-1922.**Construction and interpretation.**Act superior to all laws in conflict,
§54-1922.

Separability of provisions, §54-1924.

Construction management**licensing, §§54-4501 to 54-4514.****Contract awarding agencies.**Filing of notices and income tax
return, §54-1904A.**Contracts.**Letting contracts to unlicensed
persons, §54-1920.**Courts.**Revocation of license by court,
§54-1919.**Criminal offenses.**

Violations of act, §54-1920.

Definitions, §54-1901.

Public contracts bond act, §54-1930.

Disciplinary proceedings, §54-1914.**District courts.**Court review of board decisions,
§54-1916.**Diversion of funds or property.**Grounds for disciplinary proceedings,
§54-1914.**Exemptions, §54-1903.****Federal aid.**

Funds.

Defined, §54-1901.

PUBLIC WORKS CONTRACTORS

—Cont'd

Fees.

Licenses.

Classes of licenses, §54-1904.

Fund.

Deposit of fees collected,
§54-1921.

Refunds, §54-1911.

Renewal fees, §54-1904.

Refunds, §54-1911.

Fines.

Penalties for violations, §54-1920.

Fraud.

Misrepresentation of material facts.

Grounds for disciplinary
proceedings, §54-1914.**Funds.**

Federal aid funds.

Defined, §54-1901.

License fund.

Creation, §54-1921.

Deposit of moneys, §54-1921.

Government obligations, §54-1926.

Defined, §54-1901.

Use instead of surety bonds,
§54-1926A.**Heavy construction.**

Defined, §54-1901.

Highway construction.

Defined, §54-1901.

Income tax.Filing of notices and income tax
returns, §54-1904A.

Payment by contractors, §54-1904A.

Injunction of violations, §54-1920.**Investigations.**

Licensing board.

Authority to investigate license
applicant, §54-1910.**Joint venture applications,**

§54-1911.

Liability.

Public contracts bond act.

Liability of public body for failure
to obtain payment bond,
§54-1928.**License board.**

Appeals.

Judicial review of license board
decisions, §54-1916.

Classes of licenses.

Rules and regulations, §54-1904.

Compensation of members, §54-1908.

Created, §54-1905.

Disciplinary proceedings, §54-1914.

Duties and powers, §54-1907.

PUBLIC WORKS CONTRACTORS

—Cont'd

License board —Cont'd

Investigations.

Powers to conduct investigation,
§54-1910.

Meetings, §54-1908.

Regular meetings, §54-1908.

Oaths, §54-1905.

Power to administer, §54-1918.

Qualifications of appointees,
§54-1905.

Quorum, §54-1908.

Records.

Applications, license issued,
renewed, etc., §54-1913.

Registrar of contracts.

Appointment, §54-1907.

Removal of members, §54-1905.

Seal, §54-1907.

Subpoenas.

Investigations, §54-1918.

Term of office, §54-1905.

Vacancies, §54-1905.

Licenses.Accepting bids without license,
§54-1902.Administrative enforcement
proceedings, §54-1914.

Applications.

Filing, §54-1911.

Joint venture applications,
§54-1911.

Class AAA license, §54-1904.

Class AA license, §54-1904.

Class A license, §54-1904.

Class B license, §54-1904.

Class CC license, §54-1904.

Class C license, §54-1904.

Class D license, §54-1904.

Class "Unlimited" license, §54-1904.

Denial, §54-1911.

Disciplinary action, §54-1915.

Exemptions, §54-1902.

Expiration, §54-1912.

Fees, §54-1904.

Classes of licenses, §54-1904.

Deposit of fees collected, §54-1921.

Refunds, §54-1911.

Renewal fees, §54-1904.

Fund.

Creation, §54-1921.

Deposit of fees collected, §54-1921.

Issuance, §54-1911.

Joint venture applications, §54-1911.

Judicial review of board decisions,
§54-1916.

Licensing period, §54-1912.

PUBLIC WORKS CONTRACTORS

—Cont'd

Licenses —Cont'dLists of applications, licenses issued,
licenses renewed, etc.

Board to maintain, §54-1913.

Qualifications of applicants,
§54-1910.

Reclassification.

Disciplinary proceedings, §54-1914.

Renewal, §§54-1912, 54-1917.

Fees, §54-1904.

Suspended licenses, §54-1917.

Revocation.

Authority to revoke, §54-1914.

Judicial review of board decisions,
§54-1916.

Revocation by court, §54-1919.

Rights granted under license,
§54-1904.

Suspension.

Renewal of suspended license,
§54-1917.

Temporary suspension, §54-1914.

Unlawful to engage in contracting
without license, §54-1902.

Unlicensed persons.

Grounds for disciplinary
proceedings, §54-1914.**Misdemeanors.**Officers letting contracts to
unlicensed contractors, §54-1920.

Violations of act, §54-1920.

Notice.Filing of notices and income tax
returns, §54-1904A.**Oaths.**

License board, §54-1905.

Authority to administer oaths,
§54-1918.**Payment bonds.**Public contracts bond act, §§54-1925
to 54-1930.**Persons.**

Defined, §54-1901.

Plans and specifications.

Wilful departure or disregard.

Grounds for disciplinary
proceedings, §54-1914.**Prosecution of civil actions
against, §54-1920A.****Public contracts bond act,
§§54-1925 to 54-1930.**

Actions.

Attorneys' fees, §54-1929.

Suit on contractor's payment bond,
§54-1927.

Amount of bond, §54-1926.

PUBLIC WORKS CONTRACTORS

—Cont'd

Public contracts bond act —Cont'd

- Attorneys' fees, §54-1929.
 - Authority of state not limited by section, §54-1926.
 - Citation of act, §54-1925.
 - Claimants.
 - Defined, §54-1930.
 - Claims for labor or material furnished or equipment supplied, §54-1927.
 - Definitions, §54-1930.
 - Equipment supplied.
 - Claims for equipment supplied, §54-1927.
 - Execution of bond by sureties, §54-1926.
 - Failure to obtain payment bond.
 - Liability of public body, §54-1928.
 - Filing bond, §54-1926.
 - Government obligations, §54-1926.
 - Use instead of surety bonds, §54-1926A.
 - Labor furnished.
 - Claims, §54-1927.
 - Payment bonds.
 - Liability of public body for failure to obtain, §54-1928.
 - Performance and payment bonds required, §54-1926.
 - Person.
 - Defined, §54-1930.
 - Requirements for bonds, §54-1926.
 - Requiring bonds be furnished by particular surety company or through particular agents or brokers.
 - Illegal, §54-1926.
 - Short title of act, §54-1925.
 - Use of government obligations instead of surety bonds, §54-1926A.
- Public entities.**
Defined, §54-1901.
- Public officers and employees.**
Letting contracts to unlicensed persons.
Misdemeanor, §54-1920.
- Public policy,** §54-1901.
- Public works construction.**
Defined, §54-1901.
- Qualifications of applicants,** §54-1910.
- Records.**
Index records of applications.
Licenses, etc.
Board to maintain, §54-1913.

PUBLIC WORKS CONTRACTORS

—Cont'd

- Registrars.**
Appointment by board, §54-1907.
- Rules and regulations.**
Licensing board.
Classes of licenses, §54-1904.
- Seals and sealed instruments.**
Licensing board.
Seal of board, §54-1907.
- Sentencing.**
Penalties for violations of act, §54-1920.
- Separability of provisions,** §54-1924.
- Specialty construction.**
Defined, §54-1901.
- Subpoenas.**
License board, §54-1918.
- Title of act,** §54-1923.
- Violations.**
Grounds for disciplinary proceedings, §54-1914.
- Year.**
Defined, §54-1901.

R

- RACING,** §§54-2501 to 54-2517.
- Advanced deposit wagering,** §54-2512.
- Betting.**
Advanced deposit wagering, §54-2512.
Pari-mutuel betting.
Other betting illegal, §54-2512.
- Bonds, surety.**
Required, §54-2517.
- Breed distribution account,** §54-2513.
- Citation of act,** §54-2501.
- Criminal penalties generally,** §54-2509.
- Definitions,** §54-2502.
- Deposits.**
Licensee's right to withhold, §54-2516.
Pari-mutuel system.
Distribution of deposits, §54-2513.
Dog racing, §54-2514.
- Dog racing,** §§54-2514, 54-2514A.
- Fairs.**
Exemption from fee payment.
Fair boards and fair districts exempt from payment of fees, §54-2515.
- Fees.**
Exemption from fee payment, §54-2515.

RACING —Cont'd**Fees —Cont'd**

Licenses, §54-2506.

Race meets, §54-2508.

Felonies.**Lures.**Live lures for racing dogs,
§54-2509.**Fines.**

Pari-mutuel system.

Interstate simulcast signal
transmissions.Anticompetitive or deceptive
practices prohibited,
§54-2512.Penalty for violations of law,
§54-2509.**Funds.**

Breed distribution account, §54-2513.

Idaho horse owner/breeder award
account, §54-2513.Pari-mutuel distribution fund,
§54-2513.

Public school income fund.

Payments, §54-2515.

Racing commission account,
§54-2513.Simulcast purse moneys fund,
§54-2508.

Track distribution account, §54-2513.

Track purse enhancement account,
§54-2513.**Idaho bred horses.**

Bonus payment to breeder, §54-2510.

Race exclusively for Idaho bred
horses, §54-2510.**Idaho horse owner/breeder award
account, §54-2513.****Insurance.**

Public liability insurance, §54-2511.

Interstate combined wagering pool.

Breakage, §54-2516.

Defined, §54-2502.

Participation in, §54-2507.

Licenses.

Applications, §54-2508.

Bond required, §54-2517.

Denial of license.

Grounds for denial, §54-2508.

Fees, §§54-2506, 54-2508.

Holding race meets without license,
§54-2508.

Issuance of license, §54-2508.

Simulcast and/or televised races,
§54-2512.

Suspension or revocation, §54-2509.

Lures.

Live lures for racing dogs.

Prohibited, §54-2509.

RACING —Cont'd**Minors.**

Using pari-mutuel system.

Unlawful, §54-2512.

Misdemeanors.

Penalty for violations, §54-2509.

**Pari-mutuel distribution fund,
§54-2513.****Pari-mutuel system.**Advanced deposit wagering,
§54-2512.

Betting generally, §54-2512.

Breakage, §54-2513.

Dog racing, §54-2514.

Distributions of deposits, §54-2513.

Dog racing, §54-2514.

Dog racing.

Breakage, §54-2514.

Distribution of deposits, §54-2514.

Illegal.

When dog racing becomes illegal,
§54-2514A.Interstate simulcast signal
transmissions.Anticompetitive or deceptive
practices prohibited, §54-2512.

Minors using, unlawful, §54-2512.

Other betting illegal, §54-2512.

Pool selling, bookmaking or
circulating handbooks, §54-2512.

Rules and regulations, §54-2506.

Simulcast or televised races,
§54-2512.

Special tax on money deposited.

Licensee's right to withhold
deposit, §54-2516.When and where authorized,
§54-2512.**Penalties.****Lures.**Live lures for racing dogs,
§54-2509.

Pari-mutuel system.

Interstate simulcast signal
transmissions.Anticompetitive or deceptive
practices prohibited,
§54-2512.

Violations, §54-2509.

Public school income fund.

Payments, §54-2515.

**Race exclusively for Idaho bred
horses, §54-2510.****Race meets.**Authority of commission to license,
regulate and supervise,
§54-2507.

Defined, §54-2502.

RACING —Cont'd**Race meets —Cont'd**

Fees.

License fee, §54-2506.

Licenses.

Applications, §54-2508.

Bond required, §54-2517.

Grounds for denial, §54-2508.

Holding meet without license,
§54-2509.License to specify kind and
character of race meet held,
§54-2508.

Required, §54-2506.

Number of days.

License to specify, §54-2508.

Rules and regulations, §54-2506.

Racing commission.

Account, §54-2513.

Appointment of members, §54-2503.

Authority of commission, §54-2507.

Chairman, §54-2504.

Claims.

Audits, §54-2504.

Compensation, §54-2504.

Created, §54-2503.

Duties, §54-2506.

Expenses, §54-2504.

Meetings.

Records, §54-2505.

Organization, §54-2504.

Payment of sums due commission,
§54-2515.

Quorum, §54-2504.

Records.

Meetings and business transacted,
§54-2505.

Removal of members, §54-2503.

Reports.

Annual report, §54-2505.

Rules and regulations.

Race meets and pari-mutuel
system, §54-2506.

Term of office of members, §54-2503.

Vacancies, §54-2503.

Violations.

Powers of commission, §54-2509.

Reports.Commission's annual report,
§54-2505.**Rules and regulations.**

Race meets, §54-2506.

Short title, §54-2501.**Simulcast and/or televised races.**

Licenses, §54-2512.

Simulcast purse moneys fund,

§54-2508.

RACING —Cont'd**State.**Race exclusively for Idaho bred
horses, §54-2510.**Taxation.**

Pari-mutuel system.

Special tax on money deposited
under system.Licensee's right to withhold
deposit, §54-2516.**Track distribution account,**

§54-2513.

Track purse enhancement account,

§54-2513.

Violations.

Penalties, §54-2509.

REAL ESTATE APPRAISERS,

§§54-4101 to 54-4119.

Applicability of provisions.

Exceptions, §54-4105.

Associations.Use of term "state licensed or
certified real estate
appraiser," §54-4111.**Board, §54-4106.**

Disciplinary proceedings.

Generally, §§54-4107, 54-4108.

Citation of act.

Short title, §54-4101.

Complaints for violations, §54-4119.**Continuing education****requirements, §54-4116.**Provider application fees, collection,
§54-4113.**Corporations.**Use of term "state licensed or
certified real estate
appraiser," §54-4111.**Criminal offenses.**

Violations, §54-4119.

Definitions, §54-4104.**Depositions.**

Disciplinary proceedings.

Powers of board, §54-4107.

Disciplinary proceedings.

Grounds, §54-4107.

Hearing, §54-4108.

Powers of board, §54-4107.

Examinations.

Fees, §54-4113.

Qualification for licensure or
certification, §54-4110.Regular examinations for licensure
or certification, §54-4112.Required for issuance of license or
certificate, §54-4102.**Exceptions to provisions, §54-4105.**

REAL ESTATE APPRAISERS

—Cont'd

Fees.

- Continuing education provider application fees.
- Collection, §54-4113.
- Licenses or certificates, §54-4113.

Hearings.

- Disciplinary proceedings, §54-4108.

Injunctions.

- Violations of provisions, §54-4117.

Investigations.

- Board.
- Disciplinary proceedings, §54-4107.
- Powers, §54-4106.

Legislative intent, §54-4102.**Licenses or certificates.**

- Applications, §54-4110.
- Continuing education requirements, §54-4116.
- Examinations, §54-4110.
- Fees, §54-4113.
- Regular examinations, §54-4112.
- Required, §54-4102.
- Expiration, §54-4114.
- Fees, §54-4113.
- Firms, partnerships, corporations or groups, §54-4111.
- Issuance, §54-4113.
- Nonresidents, §54-4115.
- Qualifications, §54-4110.
- Reciprocity, §54-4115.
- Reinstatement.
- Fees, §54-4113.

- Reinstatement of expired license, §54-4114.

- Renewal, §§54-4114, 54-4116.

- Fees, §54-4113.

- Required, §54-4103.

- Temporary practice, §54-4115.

- Use of term “state licensed” or “state certified real estate appraiser,” §54-4103.

Nonresidents.

- Licenses or certification, §54-4115.
- Service of process, §54-4115.

Partnerships.

- Use of term “state licensed or certified real estate appraiser,” §54-4111.

Penalties.

- Violations of provisions, §54-4119.

Prohibited acts.

- Grounds for disciplinary proceedings, §54-4107.

Prosecuting attorneys.

- Violations of provisions.
- Prosecution by, §54-4118.

REAL ESTATE APPRAISERS

—Cont'd

Records.

- Retention of records, §54-4109.

Rules and regulations.

- Board, §54-4106.

Service of process.

- Nonresident licensees or certificate holders or temporary practitioners.
- Consent for service, §54-4115.

State certified real estate appraiser.

- Use of term, §§54-4103, 54-4111.

State licensed.

- Use of term, §54-4103.

Subpoenas.

- Disciplinary proceedings.
- Powers of board, §54-4107.

Temporary practice, §54-4115.

- Service of process, §54-4115.

Title of act.

- Short title, §54-4101.

Use of term “state licensed” or “state certified real estate appraisers,” §54-4111.

- Corporations, partnerships, §54-4111.

Violations of provisions.

- Complaint, §54-4118.
- Injunctions, §54-4117.
- Penalties, §54-4119.
- Prosecution, §54-4118.

Witnesses.

- Disciplinary proceedings.
- Powers of board, §54-4107.

REAL ESTATE BROKERS AND**SALESPERSONS, §§54-2001 to 54-2097.****Actions.**

- Collection of compensation, §54-2054.

Advertising, §54-2053.**After-the-fact referral fees, prohibition, §54-2054.****Attorneys' fees.**

- Actions on bonds.
- Attorneys' fees allowed, §54-1929.

Audit.

- Transaction record, trust accounts, §54-2058.

Augmentation of recovery fund, §54-2070.**Branch offices.**

- Closing, §54-2056.
- Licenses.
- Special requirements, §54-2016.
- Managers.
- Absences, §54-2039.

REAL ESTATE BROKERS AND SALESPERSONS —Cont'd**Branch offices —Cont'd**

Managers —Cont'd

Changes, §54-2039.

Required, §54-2039.

Brokerage representation, §§54-2082 to 54-2097.

Agency disclosure brochure and representation confirmation, §54-2085.

Assigned agency, §54-2088.

Citation of act, §54-2082.

Client.

Duties to, §54-2087.

Confidential client information.

Duties and obligations owed after termination of representation, §54-2092.

Duties owed to client, §54-2087.

Conflict of laws, §54-2095.

Creation of brokerage agency relationship, §54-2084.

Payment of compensation not to constitute express agreement, §54-2089.

Customer.

Duties to, §54-2086.

Definitions, §54-2083.

Disclosure and writing requirements, §§54-2085 to 54-2087.

Duration of express representation, §54-2091.

Duties to clients, §54-2087.

Express representation.

Duration, §54-2091.

Fiduciaries.

Representation not fiduciary in nature, §54-2094.

Limited dual agency, §54-2088.

Severability of provisions, §54-2096.

Termination of representation.

Duties and obligations owed after, §54-2092.

Title of act, §54-2082.

Vicarious liability.

Abolished, §54-2093.

Written office policy.

Required, §54-2090.

Brokerage representation agreements, §54-2050.**Broker price opinions, §54-2038.**

Defined, §54-2004.

Cease and desist orders, §54-2067.**Change in personal information.**

Notice, §54-2018.

Change of business relationship, §54-2056.**REAL ESTATE BROKERS AND SALESPERSONS —Cont'd****Citation of act, §54-2001.****Claims against licensees.**

Real estate recovery fund, §§54-2069 to 54-2078.

Compensation, commissions and fees, §54-2054.**Compliance with chapter.**

Active licensees, §54-2003.

Conflicts of interest.

Licensees dealing with in own property interests, §54-2055.

Consideration.

Receipt of, §54-2045.

Continuing education, §54-2023.**Contracts.**

Brokerage representation agreements, §54-2050.

Double contracts.

Prohibited, §54-2054.

Electronically generated agreements, §54-2052.

Brokerage representation agreements, §54-2050.

Dealing with licensee's own property, §54-2055.**Definitions, §54-2004.**

Brokerage representation, §54-2083.

Properly licensed, §54-2038.

Designated broker, §54-2038.

Absences, §54-2039.

Changes, §54-2039.

Death or incapacity, §54-2057.

More than one business, §54-2040.

Place of business.

Main office or business location, §54-2040.

Responsibilities, §54-2038.

Discipline, §§54-2058 to 54-2063.

Additional grounds for, §54-2061.

Governing law, §54-2063.

Grounds, §§54-2060 to 54-2062.

Investigations, §54-2058.

Powers of commission, §§54-2058, 54-2059.

Real estate recovery fund.

Provisions not to limit commission's disciplinary powers, §54-2078.

Termination of salespersons for violation of disciplinary provisions.

Statement to be filed with commission, §54-2079.

Double contracts, prohibition, §54-2054.

REAL ESTATE BROKERS AND SALESPERSONS —Cont'd

Earnest money.

Disputed earnest money, §54-2047.

Education.

Certification.

Course providers, §54-2026.

Duties and requirements of certified course providers, §54-2027.

Expiration of certification, §54-2030.

Notice of potential expiration, §54-2029.

Fees for certification and recertification, §54-2020.

Renewal of certification, §54-2028.

Term of certification, §54-2028.

Withdrawal of certification, §§54-2030, 54-2031.

Courses and course content, §54-2036.

Renewal of certification, §54-2037.

Term of certification, §54-2037.

Instructors, §§54-2030, 54-2032.

Qualifications, §54-2033.

Recertification, §54-2035.

Renewal of certification, §54-2035.

Special consideration, §54-2034.

Teaching standards, §54-2033.

Term of certification, §54-2035.

Purpose, §54-2024.

Required, §54-2025.

License requirements, §54-2022.

Continuing education, §54-2023.

Real estate education council, §§54-2008 to 54-2010.

Electronically generated agreements, §54-2052.

Brokerage representation agreements, §54-2050.

Errors and omissions insurance, §54-2013.

Licensee to carry, §54-2013.

Establishment of real estate recovery fund, §54-2069.

Evasion of chapter.

Considered unlicensed and unlawful practice, §54-2003.

Fees.

Finder's fees prohibited, §54-2054.

Licenses, §54-2020.

Disposition of fees collected, §54-2021.

Examinations, §54-2014.

REAL ESTATE BROKERS AND SALESPERSONS —Cont'd

Fees —Cont'd

Licenses —Cont'd

Nonrefundable, §54-2018.

Prohibited acts as to fees, §54-2054.

Spitting fee with unlicensed person prohibited, §54-2054.

Fee-splitting with unlicensed individual, §54-2054.

Finder's fee, prohibition, §54-2054.

Fingerprint-based criminal history records check.

Applicant for individual primary license, §§54-2012, 54-2015.

Funds.

Special real estate fund, §54-2021.

Injunctions.

Violations of provisions, §54-2066.

Inspections.

Transaction record, trust accounts, §54-2058.

Interference with broker's agreement.

Prohibition, §54-2054.

Kickbacks.

Prohibited, §54-2054.

Licenses.

Acting without license.

Penalty, §54-2065.

Active status, §54-2018.

Branch offices, §54-2016.

Change in personal information, notice, §54-2018.

Continuing education requirements, §54-2023.

Denial of applications, §54-2019.

Effective date.

Request for licensure or changes, §54-2018.

Examinations, §54-2014.

Exceptions to requirement, §54-2003.

Exemption review.

Applicants convicted of felonies or having license revoked for certain violations, §54-2012.

Expiration, §54-2018.

Fees, §54-2020.

Disposition of fees collected, §54-2021.

Examinations, §54-2014.

Nonrefundable, §54-2018.

Fingerprint-based criminal history records check.

Applicant for individual primary license, §§54-2012, 54-2015.

REAL ESTATE BROKERS AND SALESPERSONS —Cont'd

Licenses —Cont'd

- Inactive status, §54-2018.
- Continuing education requirement.
 - Changing from inactive to active status, §54-2023.
- Late renewal, §54-2018.
- Legal business entities.
 - Additional requirements, §54-2016.
- Lending license prohibited, §54-2040.
- Limited broker, §54-2038.
- Notice of change in personal information, §54-2018.
- Qualifications.
 - Education, §54-2022.
 - Individual primary license, §54-2012.
 - Individuals actively licensed in another state or jurisdiction, §54-2015.
 - Primary licenses for legal business entities, sole proprietorships and branch offices, §54-2016.
- Reciprocity.
 - Individuals actively licensed in another state or jurisdiction seeking primary licensure, §54-2015.
- Renewal, §54-2018.
 - Continuing education requirements, §54-2023.
- Report as to listings and sales.
 - Required to file, §54-2012.
- Required, §54-2002.
 - Exceptions, §54-2003.
- Revocation or suspension.
 - Disciplinary proceedings generally, §§54-2058 to 54-2063.
 - Real estate recovery fund.
 - Automatic suspension on payment by commission, §54-2074.
- Service of process.
 - Consent to service, signing, executive director appointed as agent, §§54-2012, 54-2015.
- Signature required, §54-2018.
- Sole proprietorships.
 - Additional requirements, §54-2016.
- Types of licenses, §54-2011.
- Limited broker.**
 - Licensing as, §54-2038.

REAL ESTATE BROKERS AND SALESPERSONS —Cont'd

Mobile home, manufactured or floating home sales.

- Compliance with chapter required, §54-2003.

Offers to purchase, §54-2051.

- Electronically generated agreements, §54-2052.

Personal property.

- Transactions involving, compliance with chapter required, §54-2003.

Place of business.

- Designated broker.
 - Main office or business location, §54-2040.

Price of real estate.

- Broker price opinion, §54-2038.
- Defined, §54-2004.

Prosecuting attorneys.

- Duty to prosecute violations, §54-2064.

Real estate commission.

- Cease and desist orders, §54-2067.
- Compensation of members, §54-2007.
- Complaints for violations.

- Commission may prefer before court, §54-2064.

- Creation, §54-2005.

- Disciplinary actions generally, §§54-2058 to 54-2063.

- Duties, §54-2007.

- Executive director, §54-2006.

- Injunction of violations.

- Power to institute proceedings, §54-2066.

- Meetings.

- Organizational meeting, §54-2006.

- Members, §§54-2005 to 54-2007.

- Powers, §54-2007.

- Rulemaking authority, §54-2097.

- Subrogation.

- Real estate recovery fund.

- Right of commission to subrogation on payment from, §54-2076.

- Witnesses.

- Powers as to, §54-2068.

- Subpoenas, §54-2068.

Real estate education council.

- Compensation of members, §54-2010.

- Establishment, §54-2008.

- Members, §§54-2008 to 54-2010.

- Terms of members, §54-2009.

Real estate recovery fund,

- §§54-2069 to 54-2078.

REAL ESTATE BROKERS AND SALESPERSONS —Cont'd

Rebates.

Prohibited, §54-2054.

Reciprocity.

Licenses.

Individuals actively licensed in another state or jurisdiction seeking primary licensure, §54-2015.

Records.

Audit of transaction records, §54-2058.

Ledger record, §54-2045.

Public inspection, §54-2080.

Responsible broker, §54-2048.

Retention schedules, §54-2049.

Trust accounts, §54-2044.

Referrals.

After-the-fact referral fees, prohibition, §54-2054.

Representing broker as sale associate.

Properly licensed, requirement, §54-2038.

Responsible broker for the transaction.

Duties and recordkeeping, §54-2048.

Services of process.

Consent to service, license applicant signing, executor director appointed as agent, §§54-2012, 54-2015.

Special real estate fund, §54-2021.

Termination of business relationships by licensees, §54-2056.

Title of act, §54-2001.

Trust accounts, §§54-2041 to 54-2046.

Audit, §54-2058.

Deposits in, §54-2045.

Disbursements, §54-2046.

Interest-bearing trust accounts, §54-2043.

Noninterest-bearing trust accounts, §54-2042.

Records, §54-2044.

Required, §54-2041.

Waiver of rights.

Real estate recovery fund claims, §54-2077.

REAL ESTATE RECOVERY FUND, §§54-2069 to 54-2078.

REAL PROPERTY.

Abstracters of title, §§54-101 to 54-105.

REAL PROPERTY —Cont'd Appraisers.

General provisions, §§54-4101 to 54-4119.

Brokers, §§54-2001 to 54-2097.

Real estate appraisers, §§54-4101 to 54-4119.

Real estate brokers and salespersons, §§54-2001 to 54-2097.

REBATES.

Real estate brokers and salespersons.

Prohibited, §54-2054.

RECIPROCITY.

Accountants.

Requirements to practice as certified public accountant, §54-210.

Acupuncture.

Licensure, §54-4709.

Counselors and therapists.

Licenses, §54-3406.

Dentists, §54-916B.

Landscape architects.

Registration, §54-3003.

Nurses.

Licensed practical nurses, §54-1407.

Registered nurses, §54-1408.

Nursing home administrators.

Licenses.

Indorsement, §54-1609.

Occupational therapists.

Licenses, §54-3709.

Pharmacists and pharmacies.

Qualifications for licensure by reciprocity, §54-1723.

Physical therapy practice.

Licenses, §54-2211.

Physicians and surgeons.

Licensure by indorsement, §54-1811.

Podiatrists.

License by indorsement, §54-613.

Psychologists.

Licenses, §54-2312.

Real estate brokers and salespersons.

Licenses.

Individuals actively license in another state or jurisdiction seeking primary licensure, §54-2015.

Water supply and waterworks.

Drinking water and wastewater professionals licenses, §54-2410.

RECORDS.

Architects.

Technical submissions, §54-308.

RECORDS —Cont'd**Athletic commission, §54-404.****Barbers.**

Board of barber examiners.

Public record for licenses, §54-522.

Cosmeticians.

Board of cosmetology.

Permanent record of proceedings,
§54-834.

Licenses.

Public records for licenses, §54-822.

Dentists.

Examinations.

Board to keep record of applicants,
§54-913.

Peer review committees.

Confidentiality of, §54-934.

Engineers.

Board of licensure.

Record of proceedings, §54-1210.

Evidence.Proof of facts contained in public
records.

Prescription drugs.

Proof of status, §54-1738.

**Health professional peer entity
assistance, §54-4403.****Midwives, §54-5511.****Pharmacists and pharmacies.**

Drug outlets.

Failure to keep outlets, §54-1732.

Legend drugs.

Manufacturers and wholesalers to
maintain records, §54-1735.

Maintenance of records, §54-1735.

Physicians and surgeons.

Board of medicine.

Access to records, §54-1820.

Prescriptions.

Prescription drug status.

Proof of status, §54-1738.

**Proof of facts contained in public
records.**

Prescription drugs.

Proof of status, §54-1738.

Public records.Proof of facts contained in public
records.

Prescription drug status, §54-1738.

Public works contractors.

Index records of applications.

Licenses, etc.

Board to maintain, §54-1913.

Real estate appraisers.

Retention of records, §54-4109.

RECORDS —Cont'd**Scrap dealers.**Nonferrous or stainless steel metal
property.Purchasing or receiving from
general public, §54-2702.**State athletic commission, §54-404.****Surveys and surveyors.**

Board of licensure.

Record of proceedings, §54-1210.

REGISTRATION.**Barbers.**

Appeals.

Orders of board denying,
suspending or revoking
certificate, §54-530.

Fees, §54-518.

Issuance of certificate, §54-511.

Persons having practiced in another
state or country, §54-512.

Required, §54-501.

**Construction contractors, §§54-5201
to 54-5219.****Fees.**

Barbers, §54-518.

Cosmeticians, §54-818.

Geologists, §54-2816.

Geologists.

Applications.

Fees, §54-2813.

Forms, §54-2813.

Certificates of registration.

Contents, §54-2815.

Expiration, §54-2816.

Hearings.

Revocation or suspension of
certificate, §54-2819.

Issuance, §54-2815.

Obtaining or using false or forged
certificates, §54-2821.

Renewal, §54-2816.

Suspension or revocation,
§54-2819.

Fees, §54-2813.

Qualifications for registration,
§54-2812.**Heating, ventilation and air
conditioning apprentices.**

Required, fee, §54-5012.

Pharmacists and pharmacies.Applications for certificates,
§54-1730.

Drug or device outlets, §54-1729.

REGISTRATION —Cont'd**Pharmacists and pharmacies****—Cont'd**

Telepharmacy.

Practice of telepharmacy across state lines.

Registration to engage in,
§54-1723A.**Physicians and surgeons.**

Externs, §54-1807.

Interns, §54-1807.

Residents, §54-1807.

Temporary registration, §54-1813.

Residential or assisted living facility administrators.

Revocation or suspension of registration.

Reissuance of revoked registration,
§54-4214.**RELIGION.****Nursing home administrators.**

Licenses.

Religious exemption, §54-1607.

REPORTERS.**Shorthand reporters**, §§54-3101 to
54-3118.**REPORTS.****Accountants**, §54-221.**Boxing, sparring and wrestling.**

Failure to make or unsatisfactory reports, §54-419.

Promoter's statements and reports of event, §54-411.

Simultaneous or closed circuit telecasts, §54-413.

Health professional peer entity assistance, §54-4407.

Referrals to entities, §54-4406.

Nursing home administrators.

Administrators-in-training.

Quarterly reports, §54-1610.

Pharmacists and pharmacies.Out-of-state mail service pharmacies,
§54-1742.**Physicians and surgeons.**

Disabled physicians.

Report of examining committee,
§54-1836.

Violations, §54-1818.

Racing.Commission's annual report,
§54-2505.**Scrap dealers.**

Nonferrous or stainless steel metal property.

Purchasing or receiving from general public, §54-2705.

RESIDENTIAL CARE FACILITY**ADMINISTRATORS**, §§54-4201
to 54-4216.**Appeals.**Judicial review of board rulings,
§54-4215.**Board of examiners**, §§54-4204,
54-4205.Register of applications for licenses,
§54-4209.**Citation of act.**

Short title, §54-4201.

Code of ethics.Authority of board to adopt,
§54-4205.**Continuing education**, §54-4209.**Criminal offenses.**

Prohibited acts, §54-4212.

Definitions, §54-4201.**Disciplinary action**, §54-4213.**Education.**

Continuing education, §54-4209.

Educational programs, §54-4208.

Fees.

Disposition of receipts, §54-4216.

Licenses, §54-4205.

Licenses or provisional permits,
§54-4205.

Reinstatement of license, §54-4209.

Fraud.

Misdemeanors, §54-4212.

Judicial review of board actions,
§54-4215.**License.**

Examinations.

Frequency, §54-4207.

Subject matter, §54-4207.

Expiration, §54-4209.

Fees, §54-4205.

Reinstatement, §54-4209.

Indorsement, §54-4210.

Issuance, §54-4208.

Nursing home administrator in good standing.

Issuance of license to, §54-4211.

Qualifications, §54-4206.

Refusal to renew or issue, revocation or suspension, §54-4213.

Reissuance of revoked license,
§54-4214.

Register of applicants, §54-4209.

Reinstatement of expired license,
§54-4209.

Renewal, §54-4209.

Continuing education, proof,
§54-4209.

Required to practice, §54-4203.

**RESIDENTIAL CARE FACILITY
ADMINISTRATORS —Cont'd**

License —Cont'd

Revocation or suspension.
Reissuance of revoked license,
§54-4214.

Unlicensed practice.
Misdemeanors, §54-4212.

Misdemeanors.

Prohibited acts, §54-4212.

**Nursing home administrator in
good standing.**

Issuance of license to, §54-4211.

Provisional permit.

Fees, §54-4205.
Issuance, period of permit, §54-4211.
Refusal to renew or issue, revocation
or suspension, §54-4213.
Reissuance of revoked permit,
§54-4214.

Required to practice, §54-4203.

**Register of applicants for license,
§54-4209.**

Registration.

Revocation or suspension of
registration.
Reissuance of revoked registration,
§54-4214.

Rules and regulations.

Board of examiners, §54-4205.

**Standards for administrators,
§54-4205.**

**Supervision by licensed
administrator.**

Required, §54-4203.

Title of act.

Short title, §54-4201.

Violations of provisions.

Misdemeanors, §54-4212.

**RESIDENTIAL CARE OR
ASSISTED LIVING
FACILITIES.**

Administrator.

Licensing and regulation generally,
§§54-4201 to 54-4216.

**RESPIRATORY CARE PRACTICE,
§§54-4301 to 54-4321.**

Board, §§54-4313 to 54-4317.

Appointment, §54-4313.
Compensation, §54-4313.
Composition, §54-4313.
Contracts.
Verification of claims of applicants,
§54-4317.
Duties, §54-4314.
Executive director, §54-4315.
Expenses, §54-4315.

**RESPIRATORY CARE PRACTICE
—Cont'd**

Board —Cont'd

Meetings, §54-4313.
Powers, §54-4314.
Qualifications of members, §54-4313.
Quorum, §54-4313.
Rules and regulations.
Promulgation, §54-4316.
Terms of office, §54-4313.

Citation of chapter, §54-4301.

Construction and interpretation.

Severability of provisions of chapter,
§54-4321.

Continuing education.

License renewal, §54-4310.

Contracts.

Board.
Verification of claims of applicants,
§54-4317.

Credentials or designation.

Use or display, §54-4318.

Criminal offenses.

Violations of provisions, §54-4320.

Definitions, §54-4303.

Effective date of chapter, §54-4305.

Exemptions from chapter, §54-4308.

Injunctions.

Violations of chapter, §54-4319.

Intent of legislature, §54-4302.

Legislature.

Intent of legislature, §54-4302.

Licenses.

Application, §§54-4305, 54-4306.
Exemptions, §54-4308.
Fees, §§54-4309, 54-4311.
Issuance, §54-4309.
Polysomnography related respiratory
care, §54-4304A.
Qualifications of applicants,
§54-4306.
Renewal, §54-4310.
Refusal to renew, §54-4312.
Required, §54-4304.
Suspension or revocation, §54-4312.

Misdemeanors.

Violations of chapter, §54-4320.

Permits.

Polysomnography related respiratory
care, §54-4304A.
Temporary permits.
Application, §§54-4305, 54-4307.
Duration, §54-4307.
Exemptions, §54-4308.
Fees, §§54-4309, 54-4311.
Issuance, §54-4309.
Renewal, §§54-4307, 54-4310.
Refusal to renew, §54-4312.

RESPIRATORY CARE PRACTICE

—Cont'd

Permits —Cont'd

Temporary permits —Cont'd

Required, §54-4304.

Suspension or revocation,
§54-4312.**Polysomnography related**

respiratory care, §54-4304A.

**Professional designations or
credentials.**

Use or display, §54-4318.

Rules and regulations.

Promulgation, §54-4316.

**Severability of provisions of
chapter, §54-4321.****Short title of chapter, §54-4301.****Violations of chapter.**

Consumer protection act, §54-4319.

Injunctions, §54-4319.

Misdemeanors, §54-4320.

RESTITUTION.**Chiropractors.**Reimbursement for losses suffered by
patient, §54-713.**RULES AND REGULATIONS.****Barbers.**

Inspection rules, §54-524.

Boxing, sparring and wrestling.Clean and sportsmanlike conduct,
§54-414.Suspension from participating in
contests for violations, §54-418.**Cosmeticians.**

Administrative regulations, §54-821.

Dietitians.

Board of medicine, §54-3505.

**Electrical contractors and
journeymen.**

Authority of director, §54-1005.

Electrical board.

Authority, §54-1006.

**Health professional peer entity
assistance, §54-4402.**

Administrative rules, §54-4405.

**Morticians, funeral directors and
embalmers.**

Handling of dead bodies, §54-1119.

Nursing home administrators.

Board of examiners.

Power to promulgate, §54-1604.

Occupational therapists.

Licensure board, §54-3717.

Pharmacists and pharmacies.

Drug or device outlets, §54-1729.

State board of pharmacy.

Authority to promulgate, §54-1717.

RULES AND REGULATIONS

—Cont'd

Public works contractors.

Licensing board.

Classes of licenses, §54-1904.

Racing.

Race meets, §54-2506.

Real estate appraisers.

Board, §54-4106.

**Residential or assisted living
facility administrators.**

Board of examiners, §54-4205.

Respiratory care practice.

Promulgation, §54-4316.

S**SALARIES.****Geologists.**

Board of registration.

Compensation for board members,
§54-2805.**Pharmacists and pharmacies.**

State board of pharmacy.

Compensation of board members,
§54-1714.**SALES.****Cemetery merchandise or services.**Prepaid funeral or cemetery
merchandise or services,
§§54-1129 to 54-1138.**Funeral merchandise or services.**Prepaid funeral or cemetery
merchandise or services,
§§54-1129 to 54-1138.**Morticians, funeral directors and
embalmers.**Prepaid funeral or cemetery
merchandise or services.General provisions, §§54-1129 to
54-1138.**Pharmacists and pharmacies.**

Prescription drugs.

Exceptions, §54-1734.

SANITATION.**Cosmeticians, §54-824A.**Inspections of cosmetological
establishments, §54-824.**SCRAP DEALERS.****Nonferrous or stainless steel metal
property, §§54-2701 to 54-2708.**

Commercial accounts.

Defined, §54-2701.

Recordkeeping, §54-2704.

Commercial enterprises.

Defined, §54-2701.

SCRAP DEALERS —Cont'd**Nonferrous or stainless steel metal property —Cont'd**

Commercial enterprises —Cont'd

Recordkeeping, §54-2704.

Definitions, §54-2701.

Exemption transaction from act, §54-2708.

Preserving evidence of metal theft, §54-2706.

Purchasing or receiving from general public, §54-2703.

Reporting to law enforcement, §54-2705.

Standardized or electronic record form, §54-2702.

Reporting to law enforcement, §54-2705.

Unlawful violations, §54-2707.

SEALS AND SEALED INSTRUMENTS.**Architects.**

Licensed architect's seal, §54-308.

Engineers.

Use and design of seal, §54-1215.

Geologists.

Invalid affixations unlawful, §54-2815.

Work requiring seal, §54-2815.

Public works contractors.

Licensing board.

Seal of board, §54-1907.

Surveyors.

Use and design of seal, §54-1215.

SEIZURES, EPILEPSY.**Notification of drug product selection for epilepsy and seizure drugs, §54-1770.****SENTENCING.****Scrap dealers.**

Nonferrous or stainless steel metal property.

Unlawful violations, §54-2707.

SERVICE OF PROCESS.**Accountants.**

Complaints for injunctions pendente lite, §54-223.

Athletic commission.

Summons, §54-404.

Morticians, funeral directors and embalmers.

Notice of hearing on denial, suspension or revocation of license, §54-1117.

SERVICE OF PROCESS —Cont'd**Real estate appraisers.**

Nonresident licensees or certificate holders or temporary practitioners.

Consent for service, §54-4115.

Real estate brokers and salespersons.

Consent to service, license applicant signing, executor director appointed as agent, §§54-2012, 54-2015.

Sheriffs.

State athletic commission.

Service of summons, §54-404.

State athletic commission.

Summons, §54-404.

Student athlete agents, §54-4803.**SHERIFFS.****Athletic commission.**

Service of summons, §54-404.

Service of process.

State athletic commission.

Service of summons, §54-404.

State athletic commission.

Service of summons, §54-404.

SHORTHAND REPORTERS,

§§54-3101 to 54-3118.

Appeals.

Action by board, §54-3114.

Attorney general.

Hearings on violations.

Attorney general chairman of hearing board, §54-3113.

Available.

Defined, §54-3102.

Certificates.

Exceptions to certification requirement, §54-3104.

Fees, §54-3110.

Non-transferable, §54-3103.

Reinstatement of certification, §54-3115.

Renewal, §54-3108.

Required, §54-3103.

Suspension or revocation of certification, §54-3112.

Certified shorthand reporters

board, §§54-3105 to 54-3107.

Appeals of board action, §54-3114.

Compensation, §54-3106.

Created, §54-3105.

Duties and powers, §54-3107.

Meetings, §54-3106.

Members, §54-3105.

Organization, §54-3106.

Powers and duties, §54-3107.

SHORTHAND REPORTERS

—Cont'd

Certified shorthand reporters board —Cont'd

Quorum, §54-3106.

Citation of act, §54-3101.**Criminal offenses.**

Violations generally, §54-3118.

CSR.

Defined, §54-3102.

Unauthorized use of title, §54-3103.

Definitions, §54-3102.**Depositions.**

Taking of oral depositions.

Exceptions to certification requirement, §54-3104.

Deposits into fund, §54-3117.**Examinations.**

Applications, §54-3111.

Certification without examination, §54-3108.

Fees, §54-3110.

Notice, §54-3111.

Preparation, administration and grading, §54-3111.

Prerequisite to certificate, §54-3108.

When and where held, §54-3111.

Exceptions, §54-3104.**Fees.**

Application fees, §54-3110.

Deposit into fund, §54-3117.

Examination fee, §54-3110.

Renewal fees, §54-3110.

Schedule of fees, §54-3110.

Felonies.

Grounds for suspension or revocation, §54-3112.

Fines.

Penalties for violations, §54-3118.

Fraud.

Grounds for suspension or revocation of certification, §54-3112.

Freelance reporters.

Defined, §54-3102.

Hearings.

Violations, §54-3113.

Investigations.

Violations, §54-3113.

Judicial review of board actions, §54-3114.**Magistrates.**

Magistrate's division of district courts.

Exceptions to certification requirement, §54-3104.

Misdemeanors.

Grounds for suspension or revocation of certification, §54-3112.

SHORTHAND REPORTERS

—Cont'd

Misdemeanors —Cont'd

Violations, §54-3118.

Notice.

Examinations, §54-3111.

Official court reporters.

Defined, §54-3102.

Public policy declaration, §54-3101.**Qualifications**, §54-3108.**Shorthand reporting.**

Defined, §54-3102.

Short title of act, §54-3101.**Temporary permits.**

Qualifications, §54-3109.

Reinstatement, §54-3115.

Renewal, §54-3109.

Suspension or revocation, §54-3112.

Violations.

Hearings, §54-3113.

Attorney general chairman of hearing board, §54-3113.

Investigations, §54-3113.

Misdemeanors, §54-3118.

SIGNATURES.**Geologists.**

Signing work, §54-2815.

SIMULCASTS.**Boxing, sparring and wrestling.**

Bond of promoter, §54-408.

Permits, §54-405.

Reports, §54-413.

Tax on gross receipts, §54-413.

SOCIAL SECURITY NUMBERS.**Construction contractors.**

Application for registration, §54-5210.

Drinking water and wastewater professionals.

License applications, §54-2408.

Licenses.

Drinking water and wastewater professionals.

Applications for license to include, §54-2408.

Liquefied petroleum gas.

Applications for licensure to include SSN, §54-5313.

Public works contractors.

Applications to include individual's SSN, §54-1910.

Liquefied petroleum gas.

Licensure applications, §54-5313.

Public works contractors.

Licenses.

Applications to include individual's SSN, §54-1910.

**SOCIAL WORKER-CLIENT
PRIVILEGE, §54-3213.****SOCIAL WORKERS, §§54-3201 to
54-3217.****Attorney general.**

Duties under act, §54-3216.

**Board of social work examiners,
§§54-3203, 54-3204.****Certified social worker.**

Defined, §54-3202.

Use of title, §54-3214.

**Code of professional conduct,
§54-3210.****Consent.**

Privileged communications.

Disclosing information, §54-3213.

Construction and interpretation.

Exemptions, §54-3215.

Continuing education.

Board of social work examiners.

Power to prescribe requirements
for license renewal, §54-3204.

Criminal offenses.

Violations generally, §54-3217.

Definitions, §54-3202.**Drugs.**

Grounds for suspension or revocation
of license, §54-3211.

Drunkennes.

Grounds for suspension or revocation
of license, §54-3211.

Evidence.

Privileged communications, §54-3213.

Persons consulting social workers,
§54-3213.

Examiners.

Board of social work examiners,
§§54-3203, 54-3204.

Exemptions, §54-3215.**Fees.**

Deposit in state treasury, §54-3205.

License fees, §54-3209.

Felonies.

Grounds for suspension or revocation
of license, §54-3211.

Fraud.

Grounds for suspension or revocation
of license, §54-3211.

Hearings.

Revocation or suspension of license,
§54-3212.

**Independent practice of social
work, §54-3207.****Indorsement, §54-3208.****Legislative intent, §54-3201.****Licenses.**

Fees, §54-3209.

SOCIAL WORKERS —Cont'd**Licenses —Cont'd**

Issuance, §54-3206.

Qualifications of licensees, §54-3206.

Renewal, §54-3209.

Refusal to renew, §54-3211.

Required, §54-3214.

Suspension or revocation.

Grounds, §54-3211.

Hearings, §54-3212.

Power of board, §54-3212.

Misdemeanors.

Violations generally, §54-3217.

Occupational license fund.

Deposits, §54-3205.

**Peer entity assistance, §§54-4401 to
54-4407.****Private and independent practice
of social work, §54-3207.****Privileged communications.**

Licensed social worker-client
privilege, §54-3213.

Prosecuting attorneys.

Duties under act, §54-3216.

Purpose of act, §54-3201.**Social work.**

Defined, §54-3202.

Use of titles, §54-3214.**Violations.**

Misdemeanors, §54-3217.

SOLICITATION.**Cemetery merchandise or services.**

Prepaid cemetery merchandise or
services, §54-1136.

Funeral merchandise or services.

Prepaid funeral merchandise or
services, §54-1136.

**Morticians, funeral directors and
embalmers.**

Prepaid funeral or cemetery
merchandise or services,
§54-1136.

SPARRING.**Boxing, sparring and wrestling,
§§54-401 to 54-422.****SPEECH AND HEARING****SERVICES PRACTITIONERS,
§§54-2901 to 54-2927.****Aids, assistants and other support
personnel.**

Change of name or address,
reporting, §54-2922.

Identification, §54-2907.

Qualifications for licensure,
§§54-2914, 54-2915.

Supervision requirements, §54-2907.

SPEECH AND HEARING SERVICES PRACTITIONERS

—Cont'd

Citation of title, §54-2901.

Declaration of policy, §54-2902.

Definitions, §54-2903.

Disciplinary action against

licensees, §§54-2923 to 54-2926.

Grounds, §54-2923.

Injunctive relief, §54-2924.

Investigations, §54-2924.

Judicial review of adverse agency
action, §54-2926.

Penalties, §54-2925.

Referral for criminal prosecution,
§54-2925.

Reprimand, §54-2925.

Restrictions and/or conditions on
scope of practice, §54-2925.

Revocation or suspension of license,
§54-2925.

Dual licensure, §54-2917.

Foreign educated applicants.

Licenses, §54-2918.

Hearing aid dealers and fitters.

Change of name or address,
reporting, §54-2922.

Customer written contract
requirements, §54-2906.

Practice of fitting and dealing in
hearing aids.

Defined, §54-2903.

Qualifications for licensure, §54-2916.

Refunds to customers, §54-2906.

Support personnel, §54-2907.

Inactive licenses, §54-2921.

Licenses.

Change of name or address,
reporting, §54-2922.

Defined, §54-2903.

Denial of application, §§54-2920,
54-2923.

Disciplinary action, §§54-2923 to
54-2926.

Dual licensure, §54-2917.

Endorsement.

Issuance by, §54-2918.

Exempt persons, §54-2905.

Foreign educated applicants,
§54-2918.

Grounds for disciplinary action,
§54-2923.

Inactive licenses, §54-2921.

Posting requirement, §§54-2904,
54-2921.

Provisional permits, §54-2919.

Public display of license, §§54-2904,
54-2921.

SPEECH AND HEARING SERVICES PRACTITIONERS

—Cont'd

Licenses —Cont'd

Qualifications for licensure,
§§54-2912 to 54-2916.

Reciprocity.

Endorsement, license by, §54-2918.

Renewal and reinstatement of
licenses, §54-2921.

Reporting of name or address
change, §54-2922.

Required, §54-2904.

Unlawful practice, §§54-2904,
54-2927.

Licensure board.

Composition, §54-2908.

Defined, §54-2903.

Establishment, §54-2908.

Meetings, §54-2909.

Powers and duties, §54-2910.

Quorum, §54-2909.

Rulemaking authority, §§54-2906,
54-2910.

Minors.

Hearing aid dealers and fitters.

Medical certification requirements,
§54-2906.

Misrepresentation.

Title, abbreviation or insignia,
§54-2904.

Occupational license fund.

Deposit of funds, §54-2911.

Penalties.

Disciplinary action against licensees,
§54-2925.

Unlawful practice, §54-2927.

Policy of state, §54-2902.

Practice of audiology.

Defined, §54-2903.

**Practice of speech-language
pathology.**

Defined, §54-2903.

Provisional permits, §54-2919.

Qualifications for licensure,

§§54-2912 to 54-2916.

Audiologists, §54-2912.

Hearing aid dealers and fitters,
§54-2916.

Speech-language pathologist aid,
§54-2914.

Speech-language pathologist
assistant, §54-2915.

Speech-language pathologists,
§54-2913.

Short title, §54-2901.

Titles, abbreviations or insignia.

Misrepresentation, §54-2904.

SPEECH AND HEARING SERVICES PRACTITIONERS

—Cont'd

Unlicensed practice, §§54-2904,
54-2927.

SPEECH-LANGUAGE PATHOLOGISTS.

**Speech and hearing services
practitioners.**

Generally, §§54-2901 to 54-2927.

SPORTS.

Athletic trainers, §§54-3901 to
54-3917.

Boxing, sparring and wrestling,
§§54-401 to 54-422.

STATE BAR.

Lawyer assistance program,
§§54-4901, 54-4902.

STATE OF IDAHO.

Geologists.

State and political subdivision
contracts, §54-2818.

**Grape growers and wine producers
commission.**

Liability of acts or omissions of
commission or members,
§54-3609.

Horse racing.

Race exclusively for Idaho bred
horses, §54-2510.

Racing.

Race exclusively for Idaho bred
horses, §54-2510.

STATES.

Chiropractors.

Licensure by indorsement, §54-710.

**Electrical contractors and
journeymen.**

Licenses.

Reciprocity, §54-1007.

Engineers.

Comity licensure, §54-1219.

Indorsements.

Chiropractors.

Licensure by indorsements,
§54-710.

**Morticians, funeral directors and
embalmers.**

Persons holding current license in
other state or territory.

License granted without
examination, §54-1109.

Nursing home administrators.

Licenses.

Indorsement, §54-1609.

STATES —Cont'd

Pharmacists and pharmacies.

Licenses.

Reciprocity, §54-1723.

Physicians and surgeons.

Licenses.

Reciprocity, §54-1811.

STEERERS.

Optometrists.

Employment or use as grounds for
revocation of license, §54-1510.

STENOGRAPHERS.

Certified shorthand reporters,
§§54-3101 to 54-3118.

STUDENT ATHLETE AGENTS,

§§54-4801 to 54-4820.

Administration, §54-4803.

Administrative penalty, §54-4817.

**Application and construction of
provisions**, §54-4818.

Cancellation of contract, §54-4812.

Civil remedies, §54-4816.

Definitions, §54-4802.

Electronic signatures, §54-4819.

Fees.

Registration, §54-4809.

Notice to educational institution,
§54-4811.

Penalties, §54-4815.

Prohibited conduct, §54-4814.

Registration, §54-4804.

Certification, §54-4806.

Fees, §54-4809.

Requirements, §54-4805.

Suspension, revocation or refusal to
renew, §54-4807.

Temporary, §54-4808.

Required form of contract,
§54-4810.

Required records, §54-4813.

Retention of records, §54-4813.

Right to cancel, §54-4812.

Severability, §54-4820.

Short title, §54-4801.

Void contracts, §54-4804.

STYLISTS.

Barbers generally, §§54-501 to
54-530.

SUBPOENAS.

Architects.

Power of board of examiners to issue,
§54-312.

Boxing, sparring and wrestling.

Determination of total gross receipts
from contest and tax thereon,
§54-419.

SUBPOENAS —Cont'd**Dentists.**

Power of board to issue, §54-912.

Geologists.

Board of registration.

Power to issue subpoenas,
§54-2808.

Health professional peer entity assistance.

Records and proceedings not subject to, §54-4403.

Heating, ventilation and air conditioning contractors.

Administrator of division of building safety, power to issue, §54-5006.

Landscape architects.

Power of board to issue, §54-3003.

Licenses.

Issuance in license suspension or revocation proceedings, §54-610.

Nurses.

Disciplinary hearing, §54-1413.

Public works contractors.

License board, §54-1918.

Real estate appraisers.

Disciplinary proceedings.
Powers of board, §54-4107.

Real estate brokers and salespersons.

Powers of real estate commission,
§54-2068.

Student athlete agents, §54-4803.**SUBROGATION.****Real estate brokers and salespersons.**

Real estate recovery fund.
Commission's right to subrogation on payment from, §54-2076.

SUBSTANCE ABUSE.**Health professional peer entity assistance, §§54-4401 to 54-4407.****SUMMONS AND PROCESS.****Athletic commission.**

Power, §54-404.

State athletic commission.

Power, §54-404.

SUMO WRESTLING.**Boxing, sparring and wrestling generally, §§54-401 to 54-422.****SURGEONS, §§54-1801 to 54-1841.****SURVEYS AND SURVEYORS, §§54-1201 to 54-1236.****Appeals.**

Persons aggrieved by action of board,
§54-1225.

SURVEYS AND SURVEYORS**—Cont'd****Authority and duties of land surveyors, §54-1227.****Board of licensure.**

Appointment, §54-1203.

Compensation, §54-1205.

Expenses, §54-1205.

Meetings, §54-1207.

Organization, §54-1207.

Powers, §54-1208.

Qualifications, §54-1204.

Receipts and disbursements.

Duty of secretary, §54-1209.

Records, §54-1210.

Removal of members, §54-1206.

Secretary.

Receipts and disbursements,
§54-1209.

Term of office, §54-1203.

Vacancies.

Filling vacancies, §54-1206.

Corporations.

Practice by corporations, §54-1235.

Costs.

Public surveying.

Costs of assessment of damages,
§54-1233.

Damages.

Public surveying.

Assessment of damages for entry,
§54-1231.

Costs of assessments, §54-1233.

Tender of damages for entry,
§54-1232.

Declaration of policy, §54-1201.**Definitions, §54-1202.****Engineers.**

Performance of surveys necessary and incidental to work, §54-1227.

Examinations.

Applications.

Fees, §54-1213.

General requirements, §54-1212.

Qualifications of applicants,
§54-1212.

Scope, §54-1214.

Subjects, §54-1214.

When and where held, §54-1214.

Exemptions, §54-1223.**Fees.**

Licenses, §54-1213.

Renewal, §54-1216.

Hearings.

Licenses.

Disciplinary action, §54-1220.

Intern certificates.

Issuance, §54-1215.

SURVEYS AND SURVEYORS

—Cont'd

Intern certificates —Cont'd

Reissuance, §54-1221.

Land surveyors.

Authority and duty of professional land surveyors, §54-1227.

Defined, §54-1202.

Legal survey of land, §54-1229.**Legislative declaration**, §54-1201.**Licenses.**

Comity licensure, §54-1219.

Disciplinary action, §54-1220.

Expiration, §54-1216.

Fees, §54-1213.

General requirements for license, §54-1212.

Issuance, §54-1215.

Jurisdiction of state, §54-1236.

Reissuance, §54-1221.

Renewal, §54-1216.

Nonresidents, §54-1223.**Oaths.**

Authority of professional land surveyors to administer and certify oaths, §54-1228.

Penalties.

Defacing permanent boundary markers, §54-1234.

Violations, §54-1222.

Practice of land surveying.

Defined, §54-1202.

Public surveying.

Assessment of damages for entry, §54-1231.

Damages.

Costs of assessment of damages, §54-1233.

Right of entry, §54-1230.

Tender of damages for entry, §54-1232.

Records.

Board of licensure.

Record of proceedings, §54-1210.

Responsible charge.

Defined, §54-1202.

Roster.

Names and addresses of professional land surveyors, §54-1211.

Rules of professional responsibility.

Defined, §54-1202.

Saving clause, §54-1223.**Seals.**

Use and design, §54-1215.

Separability of provisions, §54-1226.**Successor licensees, completion of project**, §54-1223.**SURVEYS AND SURVEYORS**

—Cont'd

Violations.

Penalties, §54-1222.

Prosecution of offenses, §54-1222.

T**TAXATION.****Boxing, sparring and wrestling.**

Failure to pay delinquent tax.

Forfeiture of license and disqualification from receiving new license, §54-419.

Gross receipts, §54-411.

Simultaneous or closed circuit telecasts, §54-413.

Initial event tax, §54-411.

Notice of additional tax due, §54-419.

Closed circuit telecasts.

Boxing, sparring or wrestling exhibitions or shows.

Tax on gross receipts, §54-413.

Grape growers and wine producers commission, §54-3610.**Horse racing.**

Pari-mutuel system.

Special tax on money deposited under system.

Licensee's right to withhold deposit, §54-2516.

Simultaneous telecasts.

Boxing, sparring or wrestling exhibitions or shows.

Tax on gross receipts, §54-413.

Television.

Boxing, sparring or wrestling exhibitions or shows.

Simultaneous or closed circuit telecasts.

Tax on gross receipts, §54-413.

TEACHERS.**Optometrists.**

Limitation on application of chapter, §54-1516.

TEETH.**Dentists**, §§54-900 to 54-936.**Dentures.**

Freedom of choice of dentures act, §§54-3301 to 54-3323.

TELEPHONES.**Pharmacists and pharmacies.**

Out-of-state mail service pharmacies.

Toll-free telephone services, §54-1747.

TELEPHONES —Cont'd**Toll-free numbers.**

- Pharmacists and pharmacies.
- Out-of-state mail service pharmacies, §54-1747.

TELEVISION.**Bonds, surety.**

- Closed circuit telecasts of boxing, sparring or wrestling events.
- Promoters, §54-408.

Boxing, sparring and wrestling.

- Simultaneous telecasts or closed circuit telecasts.
- Bond of promoter, §54-408.
- Permits, §54-405.
- Reports, §54-413.
- Tax on gross receipts, §54-413.

Closed circuit telecasts.

- Boxing contests, sparring matches and wrestling shows or exhibitions.
- Bonds of promoter, §54-408.
- Permits, §54-405.
- Reports, §54-413.
- Tax on gross receipts, §54-413.

Simultaneous telecasts.

- Boxing contests, sparring matches and wrestling shows or exhibitions.
- Bond of promoter, §54-408.
- Permits, §54-405.
- Reports, §54-413.
- Tax on gross receipts, §54-413.

TESTS.**Plumbing and plumbers.**

- Inspections by agents, §54-2624.

THEFT.**Scrap dealers.**

- Nonferrous or stainless steel metal property.
- Preserving evidence of metal theft, §54-2706.

THERAPISTS.**Counselors and therapists**

- generally, §§54-3400 to 54-3415.

Massage therapists, §§54-4001 to 54-4015.**Occupational therapists, §§54-3701 to 54-3722.****Physical therapy practice, §§54-2201 to 54-2224.****TICKETS.****Boxing, sparring and wrestling.**

- Complimentary tickets limitations, §54-411.
- Resolution to adopt optional form, §54-411.

TIME.**Geologists.**

- Examinations, §54-2814.

Veterinarians.

- License.
- Reapplication after denial.
- Maximum time, §54-2115A.
- Suspension, revocation, maximum time, §54-2115A.

TITLE.**Abstracters of title, §§54-101 to 54-105.****TITLE ABSTRACTERS, §§54-101 to 54-105.****TITLE INSURANCE.****Abstracters of title.**

- Use of title insurance policy as evidence, §54-103.

TOLL-FREE TELEPHONE NUMBERS.**Pharmacists and pharmacies.**

- Out-of-state mail service pharmacies, §54-1747.

TRANSPORTATION.**Dead bodies.**

- Out of state transportation, §54-1120.

TRUSTS AND TRUSTEES.**Cemetery merchandise or services.**

- Prepaid funeral or cemetery merchandise or services.
- General provisions, §§54-1129 to 54-1138.

Funeral merchandise or services.

- Prepaid funeral or cemetery merchandise or services.
- General provisions, §§54-1129 to 54-1138.

Morticians, funeral directors and embalmers.

- Prepaid funeral or cemetery merchandise or services.
- General provisions, §§54-1129 to 54-1138.

Real estate brokers and salespersons.

- Trust accounts, §§54-2041 to 54-2046.

U

UNDERGROUND STORAGE TANKS.

Liquefied petroleum gas, §§54-5301 to 54-5317.

UNDERTAKERS.

Morticians, funeral directors and embalmers, §§54-1101 to 54-1144.

UNIFORM LAWS.

Athlete agents, §§54-4801 to 54-4820.

Determination of death act, §54-1819.

UNITED STATES.**Geologists.**

Practice of geology by officers and employees of United States.

Exceptions to act, §54-2822.

Nursing home administrators.

Administration of federal funds by board, §54-1607.

UNIVERSITIES AND COLLEGES.

Athlete agents, §§54-4801 to 54-4820.

Boxing, sparring and wrestling.

Exemption of events conducted by, §54-406.

Student athlete agents, §§54-4801 to 54-4820.

V

VENUE.**Accountants.**

Injunction proceedings, §54-223.

Morticians, funeral directors and embalmers.

Actions for injunctions against violations of act, §54-1127.

VETERANS.**Cremated remains of veterans.**

Assumption of control over unclaimed remains.

Division of veterans services or veterans organization, §54-1144.

VETERINARIANS, §§54-2101 to 54-2121.

Accounts and accounting.

Board of veterinary medicine account.

Creation, §54-2121.

Administration of chapter, §54-2119.

Advertisements.

Emergency veterinary facilities, §54-2106.

VETERINARIANS —Cont'd**Advertisements —Cont'd**

False or misleading advertising.
Grounds for revocation or suspension of license, §54-2113.

On-call emergency services, §54-2106.

Allied health professionals.

Defined, §54-2103.

Animals.

Defined, §54-2103.

Attorney general.

Duty to represent board, §54-2120.

Board of veterinary medicine, §54-2105.

Account.

Creation, §54-2121.

Attorney general.

Advising and representing board, §54-2120.

Definition of "board," §54-2103.

Citation of chapter, §54-2102.

Construction and interpretation.

Statutory construction, §54-2102.

Continuing education.

Accredited continuing education activity.

Defined, §54-2103.

Credit hours.

Defined, §54-2103.

Corporations.

Corporate practice, §54-2113.

Criminal background checks.

Licensure requirement, §54-2108.

Criminal offenses.

Practice without license or temporary permit, §54-2118.

Cruelty to animals.

Grounds for revocation or suspension of license, §54-2113.

Death of veterinarian.

Continuation of practice, §54-2104.

Declaration of policy, §54-2101.**Definitions**, §54-2103.**Dentistry.**

Defined, §54-2103.

Discipline.

Emergency proceedings.

Immediate danger, §54-2105.

Grounds, §54-2115.

Judicial review, §54-2116.

Power of board, §54-2105.

Reapplication after denial of application.

Maximum period, §54-2115A.

Relicensing and reinstatement, §54-2117.

VETERINARIANS —Cont'd**Diseases.**

Failure to report contagious or infectious disease.

Grounds for revocation or suspension of license, §54-2113.

Emergency veterinary facilities, §54-2106.

Enforcement of chapter, §54-2119.

Responsibility vested in board, §54-2105.

Euthanasia.

Certified euthanasia task force, §54-2105.

Certified euthanasia technician.

Defined, §54-2103.

Exception to license requirement, §54-2104.

Examinations.

License without test, §54-2110.

Temporary permit without examination, §54-2111.

Executive director.

Board of veterinary medicine, §54-2105.

Expiration of license or certification, §54-2112.

Fees.

Licenses.

Applications, §54-2107.

Fines.

Practicing veterinary medicine without license, §54-2118.

Injunctions.

Violations of chapter, §54-2118.

Licenses.

Applications, §54-2107.

Reapplication after denial of application.

Maximum period, §54-2115A.

Criminal background checks, §54-2108.

Exceptions, §54-2104.

Expiration of license or certification, §54-2112.

Failure to renew, §54-2112.

Fees.

Applications, §54-2107.

Licensed veterinarian.

Defined, §54-2103.

Practicing veterinary medicine without license, §54-2118.

Prerequisite to practice, §54-2104.

Qualifications of applicants, §54-2107.

Reapplication after denial of application.

Maximum period, §54-2115A.

VETERINARIANS —Cont'd**Licenses —Cont'd**

Renewal, §54-2112.

Required, §54-2104.

Revocation or suspension.

Disciplinary action generally, §§54-2115 to 54-2117.

Emergency proceedings for revocation, §54-2105.

Maximum period, §54-2115A.

Temporary permit without examination, §54-2111.

Misdemeanors.

Practicing veterinary medicine without license or temporary permit, §54-2118.

Notice.

Expiration of license, §54-2111.

On-call emergency services, §54-2106.

Peer entity assistance, §§54-4401 to 54-4407.

Permits.

Temporary permit, §54-2111.

Persons.

Defined, §54-2103.

Pharmacists and pharmacies.

Administration and delivery of prescription drugs, §54-1721.

Policy of chapter, §54-2101.

Practice of veterinary medicine.

Continuation following death of veterinarian, §54-2104.

Defined, §54-2103.

License prerequisite to practice, §54-2104.

School of veterinary medicine.

Defined, §54-2103.

Short title of chapter, §54-2102.

Specialty in which person board certified.

License without clinical competency test, §54-2110.

Unauthorized practice, §54-2114.

Veterinary medicine.

Defined, §54-2103.

Veterinary technicians.

Defined, §54-2103.

Violations.

Injunctions, §54-2118.

Penalties, §54-2118.

Remedies, §54-2118.

Zoos.

Out-of-state veterinarian practicing veterinary medicine, §54-2104.

VICARIOUS LIABILITY.**Midwives.**

Immunity of physicians, hospitals, etc., §54-5512.

VICARIOUS LIABILITY —Cont'd**Real estate brokerage representation.**

Abolished, §54-2093.

VITAL STATISTICS.**Birth certificates.**

Midwives.

Submission of false or fraudulent birth certificate, §54-5510.

VOCATIONS.**Professions, vocations and businesses.**

General provisions, §§54-101 to 54-5513.

VOLUNTEERS.**Physicians and surgeons.**

Retired physicians.

Volunteer's license, §54-1841.

W**WATER SUPPLY AND WATERWORKS.****Drinking water and wastewater professionals licenses, §§54-2401 to 54-2414.**

Application, §54-2409.

Board.

Established, §54-2404.

Expenses, §54-2405.

Meetings, §54-2405.

Officers, §54-2405.

Powers and duties, §54-2406.

Records, §54-2408.

Definitions, §54-2403.

Disciplinary actions, §54-2412.

Fees for licenses, §54-2407.

Reciprocal licenses, §54-2410.

Issuance, §54-2408.

Prosecution of violations, §54-2414.

Purposes of provisions, §54-2401.

Reciprocal licensing, §54-2410.

Renewal, §§54-2408, 54-2411.

Requirement for license, §54-2402.

Revocation or suspension, §54-2412.

Title of provisions, §54-2401.

Unlicensed practice, §54-2413.

Use of professional titles, §54-2402.

Violations, §54-2413.

Prosecution, §54-2414.

WATER SUPPLY AND WATERWORKS —Cont'd**Licenses.**

Drinking water and wastewater professionals, §§54-2401 to 54-2414.

WELFARE.**Optometrists.**

Limitation on application of chapter.

Welfare workers, §54-1516.

Social workers, §§54-3201 to 54-3217.

WHOLESALE DRUG

DISTRIBUTION ACT, §§54-1751 to 54-1759.

WINE.

Grape growers and wine producers commission, §§54-3601 to 54-3612.

WITNESSES.**Landscape architects.**

Disciplinary proceeding before board.

Compelling attendance, fees and mileage, §54-3003.

Podiatrists.

License suspension or revocation proceedings.

Powers of board, §54-610.

Real estate appraisers.

Disciplinary proceedings.

Powers of board, §54-4107.

Real estate brokers and salespersons.

Powers of real estate commission, §54-2068.

WOMEN.**Pregnancy.**

Midwives, §§54-5501 to 54-5513.

WORKERS' COMPENSATION.**Contractors.**

Construction contractors.

Application for registration.

Proof of insurance certificate or waiver, §54-5210.

WRESTLING, §§54-401 to 54-422.

Z**ZOOS.****Out-of-state veterinarian**

practicing veterinary medicine, §54-2104.

